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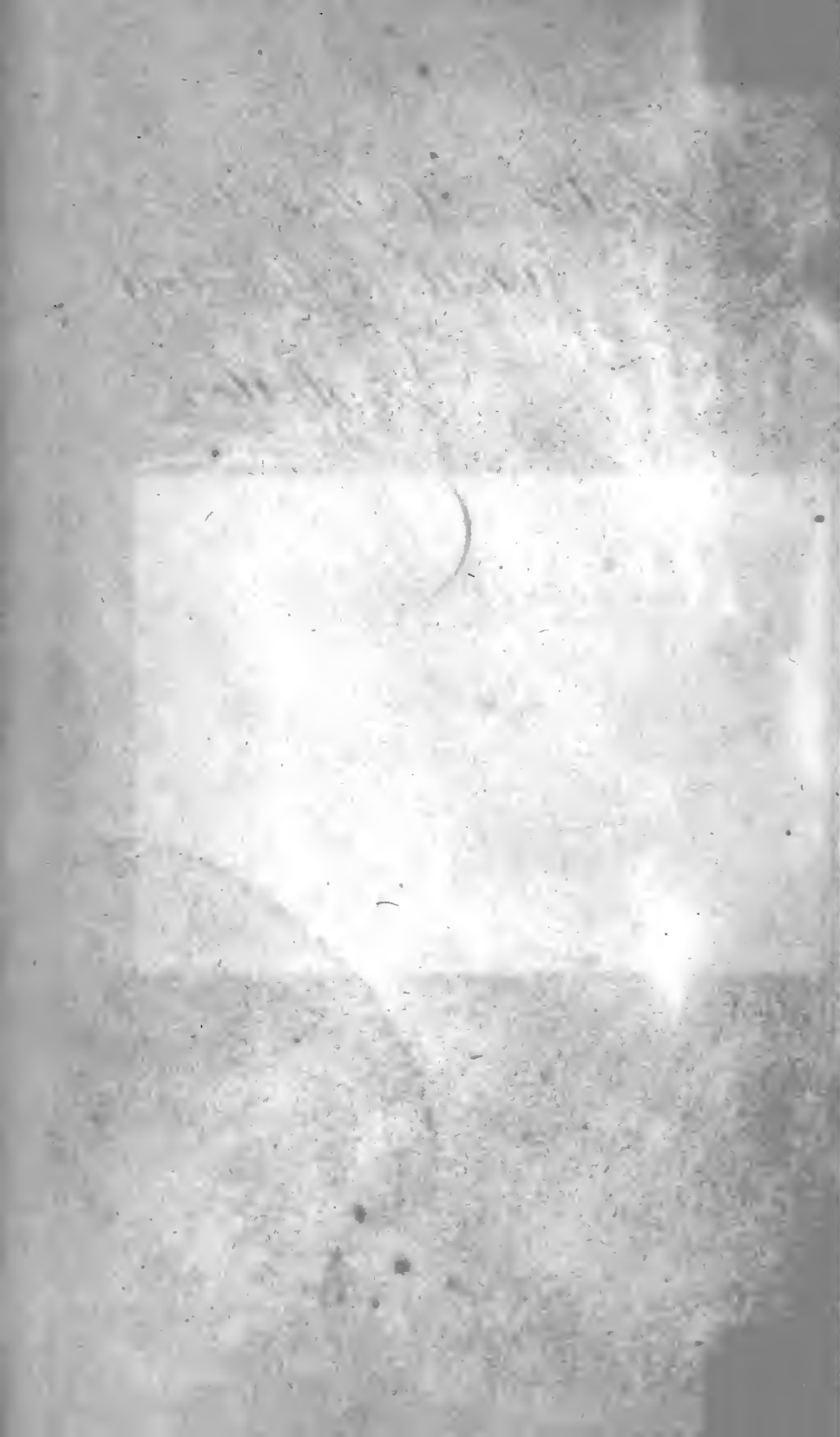
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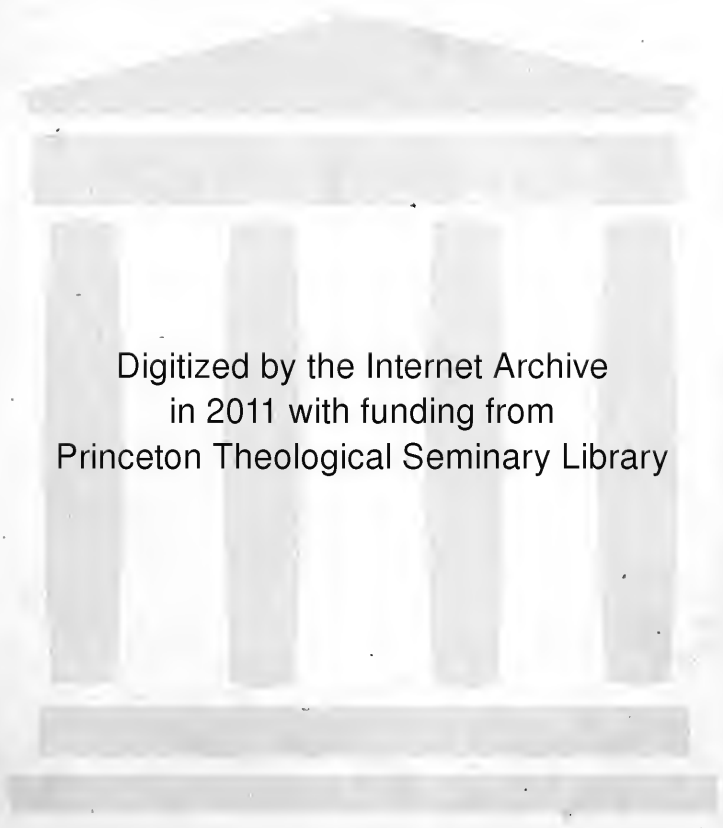
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NOTES

ON THE

HISTORY OF SLAVERY

IN

MASSACHUSETTS

BY

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Quis nescit, primam esse historię legem, ne quid falsi
dicere audeat? deinde ne quid veri non audeat?

—*Cic. de Orat.*, II., 15.

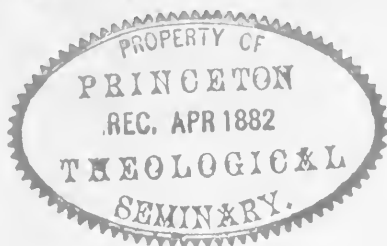
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NOTES ON THE HISTORY OF SLAVERY IN MASSACHUSETTS.

I.

WE find the earliest records of the history of slavery in Massachusetts at the period of the Pequod War—a few years after the Puritan settlement of the colony. Prior to that time an occasional offender against the laws was punished by being sold into slavery or adjudged to servitude; but the institution first appears clearly and distinctly in the enslaving of Indians captured in war. We may hereafter add a sketch of the theories which were held to justify the bondage of the heathen, but at present limit ourselves to the collection of facts to illustrate our general subject. And at the outset we desire to say that in this history there is nothing to comfort pro-slavery men anywhere. The stains which slavery has left on the proud escutcheon even of Massachusetts, are quite as significant of its hideous character as the

fatanic defiance of God and Humanity which accompanied the laying of the corner-stone of the Slaveholders' Confederacy.

The story of the extermination of the Pequods is well known. It was that warlike tribe who, in the early months of "that fatal year," 1637, were reported by Governor Winslow to Winthrop as follows :

"The Pecoats follow their fishing & planting as if they had no enemies. Their women of esteem & children are gone to Long Island with a strong guard at Pecoat. They professe there you shall finde them, and as they were there borne & bred; there their bones shall be buried, & rott in despight of the English. But if the Lord be on our side, their braggs will soon fall." *M. H. S. Coll.*, iv., vi., 164.

The extracts which follow explain themselves and hardly require comment.

Roger Williams, writing from Providence [in June, 1637] to John Winthrop, says: "I understand it would be very gratefvll to our neighbours that such Pequuts as fall to them be not enslaved, like those which are taken in warr; but (as they say is their generall custome) be vsed kindly, haue howses & goods & fields given them: because they voluntarily choose to come in to them, & if not receaved will [go] to the enemie or turne wild Irish themselues: but of this more as I shall vnderstand. . . ." *M. H. S. Coll.*, iv., vi., 195.

Again [probably in July, 1637]: "It having againe pleased the Most High to put into your hands another miserable droue of Adams degenerate feede, & our brethren by nature, I am bold (if I may not

offend in it) to request the keeping & bringing vp of one of the children. I haue fixed mine eye on this little one with the red about his neck, but I will not be peremptory in my choice, but will rest in your loving pleasure for him or any," &c. *M. H. S. Coll.*, iv., vi., 195-6.

Again [probably 18th September, 1637]: "Sir, concerning captiues (pardon my wonted boldness) the Scripture is full of mysterie & the Old Testament of types.

"If they haue deserued death 'tis sinn to spare :

"If they haue not deserued death then what punishments? Whether perpetuall slaverie.

"I doubt not but the enemie may lawfully be weaknd & despoild of all comfort of wife & children &c., but I beseech you well weigh it after a due time of trayning vp to labour & restraint, they ought not to be set free: yet so as without danger of adioyning to the enemie." *M. H. S. Coll.*, iv., vi., 214.

Later in the same year [Nov. 1637] Roger Williams, who had promised certain fugitive slaves to intercede for them, "to write that they might be vsed kindly"—fulfilled his promise in a letter to Winthrop, in which, after stating their complaints of ill usage, &c., he adds :

"My humble desire is that all that haue these poor wretches might be exhorted as to walke wisely & iustly towards them, so to make mercy eminent, for in that attribute the Father of mercy most shines to Adams miserable offspring." *M. H. S. Coll.*, iv., vi., 218, 219.

Hugh Peter writes to John Winthrop from Salem

(in 1637) : "Mr. Endecot and my selfe salute you in the Lord Jefus, etc. Wee haue heard of a diuidence of women and children in the bay and would bee glad of a share, viz. : a young woman or girle and a boy if you thinke good. *I wrote to you for some boyes for Bermudas, which I thinke is confiderable.*" *M. H. S. Coll.*, iv., vi., 95.

In this application of Hugh Peter we have a glimpse of the beginning of the Colonial Slave-Trade. He wanted "some boyes for the Bermudas," which he thought was "confiderable."

It would seem to indicate that this disposition of captive Indian boys was in accordance with custom and previous practice of the authorities. At any rate, it is certain that in the Pequod War they took many prisoners. Some of these, who had been "disposed of to particular persons in the country," *Winthrop*, i., 232, ran away, and being brought in again were "branded on the shoulder," *ib.* In July, 1637, *Winthrop* says, "We had now slain and taken, in all, about seven hundred. We sent fifteen of the boys and two women to Bermuda, by Mr. Peirce ; but he, missing it, carried them to Providence Isle," *Winthrop*, i., 234. The learned editor of *Winthrop's Journal*, referring to the fact that this proceeding in that day was probably justified by reference to the practice or institution of the Jews, very quaintly observes, "Yet that cruel people never sent prisoners so far." *Ib.*, note.

Governor *Winthrop*, writing to Governor *Bradford* of Plymouth, 28th July, 1637, an account of their success against the Pequods—"y^e Lords greate

mercies towards us, in our prevailing against his & our enemies"—says :

"The prisoners were divided, some to those of y^e river [the Connecticut Colony] and the rest to us. Of these we send the male children to Bermuda, by Mr. William Peirce, & y^e women & maid children are disposed aboute in y^e townes. Ther have now been slaine and taken, in all, aboute 700." *M. H. S. Coll.*, iv., iii., 360. Compare the order for "disposing of y^e Indian squaws," in *Mass. Records*, 1., 201.

Bradford's note to the letter quoted above, says of their being sent to Bermuda: "But y^{ey} were carried to y^e West Indeas."

Hubbard, the contemporary historian of the Indian Wars, says of these captives, "Of those who were not so desperate or fullen to sell their lives for nothing, but yielded in time, the male Children were sent to the *Bermudas*, of the females some were distributed to the English Towns; some were disposed of among the other *Indians*, to whom they were deadly enemies, as well as to ourselves." *Narrative*, 1677, p. 130.

A subsequent entry in Winthrop's Journal gives us another glimpse of the subject, Feb. 26, 1638.

"Mr. Peirce, in the Salem ship, the *Desire*, returned from the West Indies after seven months. He had been at Providence, and brought some cotton, and tobacco, and negroes, etc., from thence, and salt from *Tertugos*;" *Winthrop*, 1., 254. He adds to this account that "Dry fish and strong liquors are the only commodities for those parts. He met there two men-of-war, set forth by the lords, etc., of Providence with letters of mart, who had taken divers

prizes from the Spaniard and many negroes." Long afterwards Dr. Belknap said of the slave-trade, that the rum distilled in Massachusetts was "the mainspring of this traffick." *M. H. S. Coll.*, I., iv., 197.

Joffelyn says, that "they sent the male children of the Pequets to the Bermudas." 258. *M. H. S. Coll.*, iv., iii., 360.¹

This single cargo of women and children was probably not the only one sent, for the Company of Providence Island, in replying from London in 1638, July 3, to letters from the authorities in the island, direct special care to be taken of the "Cannibal negroes brought from New England." *Sainsbury's Calendar*, 1574-1660, 278.²

And in 1639, when the Company feared that the number of the negroes might become too great to be managed, the authorities thought they might be sold and sent to New England or Virginia. *Ib.*, 296.

The ship "Desire" was a vessel of one hundred and twenty tons, built at Marblehead in 1636, one of the earliest built in the Colony. *Winthrop*, I., 193.

In the Pequot War, some of the Narragansetts

¹ Governor Winthrop in his will (1639-41) left to his son Adam his island called the Governor's Garden, adding, "I give him also my Indians there and my boat and such household as is there."—*Winthrop's Journal*, II., 360., *App.*

² "We would have the Cannibal negroes brought from New England inquired after, whose they are, and special care taken of them." *P. R. O. Col. Ent. Bk.*, Vol. IV., p. 124. In the preface to the Colonial Calendar, p. xxv., Mr. Sainsbury explains why no answers to the Company's letters are in the State Paper Office. The Bahama Islands were governed absolutely by a Company in London, and unfortunately the letters *received* by the Company have not been preserved, or if so, it is not known where they now are. *MS. Letter.*

joined the English in its prosecution, and received a part of the prisoners as slaves, for their services. Miantunnomoh received eighty, Ninigret was to have twenty. Mather says of the principal engagement, "the captives that were taken were about one hundred and eighty, which were divided between the two Colonies, and they intended to keep them as servants, but they could not endure the Yoke, for few of them continued any considerable time with their masters." *Drake*, 122, 146. *Mather's Relation*, quoted by *Drake*, 39. See also *Hartford Treaty*, Sept. 21, 1638, in *Drake*, 125. *Drake's Mather*, 150, 151.

Captain Stoughton, who assisted in the work of exterminating the Pequots, after his arrival in the enemy's country, wrote to the Governor of Massachusetts [Winthrop] as follows: "By this pinnace, you shall receive forty-eight or fifty women and children. . . . Concerning which, there is one, I formerly mentioned, that is the fairest and largest that I saw amongst them, to whom I have given a coate to cloathe her. It is my desire to have her for a servant, if it may stand with your good liking, else not. There is a little squaw that Steward Culacut desireth, to whom he hath given a coate. Lieut. Davenport also desireth one, to wit, a small one, that hath three strokes upon her stomach, thus: — ||| +. He desireth her, if it will stand with your liking. Sofomon, the Indian, desireth a young little squaw, which I know not." *MS. Letter* in *Mafs. Archives*, quoted by *Drake*, 171.

An early traveller in New England has preserved for us the record of one of the earliest, if not, indeed, the very first attempt at breeding of slaves in Amer-

ica. The following passage from Joffelyn's Account of Two Voyages to New England, published at London in 1664, will explain itself:

“The Second of *October*, [1639] about 9 of the clock in the morning Mr. *Mavericks* Negro woman came to my chamber window, and in her own Country language and tune sang very loud and shrill, going out to her, she used a great deal of respect towards me, and willingly would have expressed her grief in *English*; but I apprehended it by her countenance and deportment, whereupon I repaired to my host, to learn of him the cause, and resolved to intreat him in her behalf, for that I understood before, that she had been a Queen in her own Country, and observed a very humble and dutiful garb used towards her by another Negro who was her maid. Mr. *Maverick* was desirous to have a breed of Negroes, and therefore seeing she would not yield by persuasions to company with a Negro young man he had in his house; he commanded him will'd she nill'd she to go to bed to her, which was no sooner done but she kickt him out again, this she took in high disdain beyond her slavery, and this was the cause of her grief.” *Joffelyn*, 28.

Joffelyn visited New England twice, and spent about ten years in this country, from 1638–39 and 1663 to 1671. In speaking of the people of Boston he mentions that the people “are well accommodated with servants . . . of these some are English, others Negroes.” *Ibid.*, 182.

Mr. Palfrey says: “Before Winthrop's arrival there were two negro slaves in Massachusetts, held

by Mr. Maverick, on Noddle's Island." *History of New England*, II., 30, *note*. If there is any evidence to sustain this statement, it is certainly not in the authority to which he refers. On the contrary, the inference is irresistible from all the authorities together, that the negroes of Mr. Maverick were a portion of those imported in the first colonial slave-ship, the *Desire*, of whose voyage we have given the history. It is not to be supposed that Mr. Maverick had waited ten years before taking the steps towards improving his stock of negroes, which are referred to by Josselyn. Ten years' slavery on Noddle's Island would have made the negro-queen more familiar with the English language, if not more compliant to the brutal customs of slavery.

It will be observed that this first entrance into the slave-trade was not a private, individual speculation. It was the enterprise of the authorities of the Colony. And on the 13th March, 1639, it was ordered by the General Court "that 3^l 8^s should be paid Lieutenant Davenport for the present, for charge disbursed for the slaves, which, when they have earned it, hee is to repay it back againe." The marginal note is, "Lieft. Davenport to keep y^e slaues." *Mafs. Rec.*, I., 253.

Emanuel Downing, a lawyer of the Inner Temple, London, who married Lucy Winthrop, sister of the elder Winthrop, came over to New England in 1638. The editors of the Winthrop papers say of him, "There were few more active or efficient friends of the Massachusetts Colony during its earliest and most critical period." His son was the famous Sir George Downing, English ambassador at the Hague.

In a letter to his brother-in-law, "probably written during the summer of 1645," is a most luminous illustration of the views of that day and generation on the subject of human slavery. He says:

"A warr with the Narraganfett is verie considerable to this plantation, ffor I doubt whither yt be not fynne in vs, hauing power in our hands, to suffer them to maynteyne the worship of the devill, which their paw wawes often doe; 2lie, if upon a Just warre the Lord should deliver them into our hands, we might easly haue men, woemen and children enough to exchange for Moores, which wilbe more gayneful pilladge for vs than wee conceive, for I doe not see how wee can thrive vntill wee gett into a stock of slaves sufficient to doe all our buifines, for our children's children will hardly see this great Continent filled with people, foe that our servants will still desire freedom to plant for them selues, and not stay but for verie great wages. And I suppose you know verie well how wee shall maynteyne 20 Moores cheaper than one Englishe servant.

"The ships that shall bring Moores may come home laden with salt which may beare most of the chardge, if not all of yt. But I marvayle Conecticott should any wayes hafard a warre without your advise, which they cannot mayntayne without your helpe." *M. H. S. Coll.*, iv., vi., 65.

II.

WE come now to the era of positive legislation on the subject of human bondage in America. Mr.

Hurd, the ablest writer on this subject, says: "The involuntary servitude of Indians and negroes in the several colonies originated under a law not promulgated by legislation, and rested upon prevalent views of universal jurisprudence, or the *law of nations*, supported by the express or implied authority of the home Government." *Law of Freedom and Bondage*, § 216, I., 225.

Under this sanction slavery may very properly be said to have originated in all the colonies, but it was not long before it made its appearance on the statute-book in Massachusetts. The first statute establishing slavery in America is to be found in the famous CODE OF FUNDAMENTALS, OR BODY OF LIBERTIES OF THE MASSACHUSETTS COLONY IN NEW-ENGLAND—the first code of laws of that colony, adopted in December, 1641. These liberties had been, after a long struggle between the magistrates and the people, extracted from the reluctant grasp of the former. "The people had [1639] long desired a body of laws, and thought their condition very unsafe, while so much power rested in the discretion of magistrates." *Winthrop*, I., 322. Never were the demands of a free people eluded by their public servants with more of the contortions as well as wisdom of the serpent. Compare *Gray in M. H. S.*, III., viii., 208.

The scantiness of the materials for the particular history of this renowned code is such as to forbid the attempt to trace with certainty to its origin the law in question. It is, however, obvious that it was made to provide for slavery as an existing, substantial fact, if not to restrain the application of those higher-

law doctrines, which the magistrates must have sometimes found inconvenient in administration. The preamble to the Body of Liberties itself might have been construed into some vague recognition of rights in individual members of society superior to legislative power—although it was promulgated by the possessors of the most arbitrary authority in the then actual holders of legislative and executive power. *Compare Hurd's Law of Freedom and Bondage*, 1., 198. Had they only learned to reason as some of the modern writers of Massachusetts history have done on this subject, the poor Indians and Negroes of that day might have compelled additional legislation if they could not vindicate their rights to freedom in the general court. For the first article of the Declaration of Rights in 1780, is only a new edition of “the glittering and founding generalities” which prefaced the Body of Liberties in 1641. Under the latter, human slavery existed for nearly a century and a half without serious challenge, while under the former it is said to have been abolished by inference by a public opinion which still continued to tolerate the slave-trade.

But to the law and the testimony. The ninety-first article of the Body of Liberties appears as follows, under the head of

“Liberties of Forreiners and Strangers.

“91. There shall never be any bond slavery, villinage or captivitie amongst us unles it be lawfull captives taken in just warres, and such strangers as willingly selle themselves or are sold to us. And these shall have all the liberties and Christian usages

which the law of God established in Israell concerning such persons doeth morally require. This exempts none from servitude who shall be Judged thereto by Authoritie." *M. H. S. Coll.*, III., viii., 231.

These laws were not printed, but were published in manuscript¹ under the superintendence of a committee in which Deputy-Governor Endicott was associated with Mr. Downing and Mr. Hawthorne, and Governor Winthrop says, "established for three years, by that experience to have them fully amended and established to be perpetual." *Mafs. Records*, I., 344, 346. *Winthrop's Journal*, II., 55. By the ninety-eighth and last section of this code, it was decreed as follows :

" 98. Lastly because our dutie and desire is to do nothing suddainlie which fundamentally concerne us, we decree that these rites and liberties, shall be Audably read and deliberately weighed at every Generall Court that shall be held, within three yeares next ensuing, And such of them as shall not be altered or repealed they shall stand so ratified, That no man shall infringe them without due punishment.

" And if any Generall Court within these next three yeares shall faile or forget to reade and consider them as abovesaid, The Governor and Deputy Governor for the time being, and every Assistant present at such Courts, shall forfeite 20 sh. a man, and everie Deputie 10 sh. a man for each neglect, which shall be

¹ There is no reason to doubt the authenticity of the ancient MS. which was the foundation of the very able and instructive paper of the late Mr. Francis C. Gray on "*The Early Laws of Massachusetts*," as a part of which the Body of Liberties was printed in 1843.

paid out of their proper estate, and not by the Country or the Townes which choose them, and whensoever there shall arise any question in any Court amonge the Assistants and Associates thereof about the explanation of these Rites and liberties, The Generall Court onely shall have power to interprett them." *M. H. S. Coll.*, III., viii., 236, 237.

It is not to be doubted that at the following sessions of the General Court, "the lawes were read over," in accordance with this decree. And before the expiration of the three years, committees were appointed to revise the Body of Liberties, and orders relating to it were passed every year afterward until 1648, when the laws were first printed. *Gray's Reports*, IX., 513.¹

Of this first printed edition of the laws it is supposed that no copy is now in existence. *Ibid.* This is much to be regretted, as a comparison might possibly throw some light on the change in the law of slavery, which appears in all the subsequent editions. Although hitherto entirely unnoticed, we regard it as highly important; for it takes away the foundation of a grievous charge against that God-fearing and law-abiding people. For, if "no person was ever born into legal slavery in Massachusetts," there was a most shocking chronic violation of law in that Colony and Province for more than a century, hardly to be reconciled with their historical reputation.

¹ In the elaborate, learned, and most valuable note of Mr. Gray, here referred to, the reader will find references to all the original authorities, which it is needless to repeat in this place. We have been unable to verify his reference to *Mafs. Records*, II., 2, for proceedings of the General Court on the 20th May, 1642, in the common copies of that volume.

In the second printed edition, that of 1660, the law appears as follows, under the title

“*BOND-SLAVERY.*”

IT is Ordered by this Court & Authority thereof; That there shall never be any bond-slavery villenage or captivity amongst us, unless it be Lawfull captives, taken in just warrs, [*or such*] as [*shall*] willingly sell themselves, or are sold to us, and such shall have the liberties, & Christian usuage, which the Law of God established in Israel, Concerning such persons, doth morally require, provided this exempts none from servitude, who shall be judged thereto by Authority. [1641.]” *Mafs. Laws, Ed. 1660, p. 5.*

The words italicized in brackets appear among the manuscript corrections of the copy which (formerly the property of Mr. Secretary Rawson, who was himself apparently the Editor of the volume) is now preserved in the Library of the American Antiquarian Society at Worcester, in Massachusetts. It is plain, however, that the printed text required correction, and—although no better authority can possibly be demanded than that of the Editor himself—it is confirmed by the subsequent edition of 1672, in which the same error, having been repeated in the text, is made the occasion of a correction in the printed table of errata. There is a want of accuracy even in this correction itself; but the intention is so obvious that it cannot be mistaken. *Mafs. Laws, Ed. 1672, pp. 10, 170.*

To prevent any possible doubt which may still linger in the mind of any reader at the end of the demonstration through which we ourselves first arrived

at this result, we will add the following record—evidence afterwards discovered—which it will puzzle the most astute critic to make “void and of none effect.”

In May, 1670, on the last day of the month, a committee was appointed by the General Court “to peruse all our lawes now in force, to collect & drawe vp any literall errors or misplacing of words or sentences therein, or any libertjes infringed, and to make a convenient table for the ready finding of all things therein, that so they may be fitted ffor the presse, & the same to present to the next session of this Court, to be further considered off & approved by the Court.”

Mafs. Records, iv., ii., 453.

At the following session of the Court, the committee presented their report accordingly, and on the 12th October, 1670, the following order was made :

“The Court, having perused & considered of the returne of the comittee, to whom the revejw of the lawes was referred, &c., by the Generall Court in May last, as to the litterall erratars, &c., do order that in * * * * *

“Page 5, lj : 3, tit. Bondslavery, read ‘or such as shall willingly,’ &c.” *Mafs. Records*, iv., ii., 467.

As the circumstances under which all these laws and liberties were originally composed and after long discussion, minute examination, and repeated revisions, finally settled and established, forbid the supposition that slavery came in an unbidden or unwelcome guest—so is it equally impossible to admit that this alteration of the special law of slavery by the omission of so important and significant a word could have been accidental or without motive.

If under the original law the children of enslaved captives and strangers might possibly have claimed exemption from that servitude to which the recognized common law of nations assigned them from their birth; this amendment, by striking out the word "strangers," removed the necessity for alienage or foreign birth as a qualification for slavery, and took off the prohibition against the children of slaves being "born into legal slavery in Massachusetts."

It is true there is little probability that in those days the natural rights of these little heathen, born in a Christian land, would have been much regarded, or that the owners of slave parents would have had much difficulty in quieting the title by having the increase of their chattels duly "judged" to servitude by authority," in accordance with the civil law; still there might have been color for the claim to freedom, which this amendment effectually barred. And this was in accordance, too, with the law of Moses—the children of slaves remained slaves, being the class described as "born in the house."

This Massachusetts law of slavery was not a regulation of the status of indentured servants. "Bondslavery" was not the name of their service, neither is it placed among the "*Liberties of servants*," but those of "*Forreiners and strangers*." And in all the editions of the laws, this distinction is maintained; "*Bondslavery*" being invariably a separate title. White servants for a term of years would hardly be designated as strangers,¹ and a careful study of the whole subject

¹ John Cotton, in his letter to Cromwell, July 28, 1651, says: "the Scots, whom God delivered into your hands at Dunbarre, and whereof

justifies at least the doubt whether the *privileges* of servants belonged to slaves at all.

The law must be interpreted in the light of contemporaneous facts of history. At the time it was made (1641), what had its authors to provide for?

1. Indian slaves — their captives taken in war.
2. Negro slaves — their own importations of “strangers” obtained by purchase or exchange.
3. Criminals — condemned to slavery as a punishment for offences.

In this light, and only in this light, is their legislation intelligible and consistent. It is very true that the code of which this law is a part “exhibits throughout the hand of the practised lawyer, familiar with the principles and securities of English Liberty;” but who had ever heard, at that time, of the “common-law rights” of Indians and negroes, or anybody else but Englishmen?

Thus stood the statute through the whole colonial period, and it was never expressly repealed. Based on the Mosaic code, it is an absolute recognition of slavery as a legitimate status, and of the right of one man to sell himself as well as that of another man to buy him. It sanctions the slave-trade, and the perpetual bondage of Indians and negroes, their children and their children’s children, and entitles Massachusetts to precedence over any and all the other colonies

fundry were sent hither, we have been desirous (as we could) to make their yoke easy. * * * They have not been sold for slaves to perpetuall servitude, but for 6, or 7 or 8 years, as we do our owne.” *Hutchinson’s Coll.*, 235. He certainly did not mean “our owne” Indians and negroes.

in similar legislation. It anticipates by many years anything of the sort to be found in the statutes of Virginia, or Maryland, or South Carolina, and nothing like it is to be found in the contemporary codes of her sister colonies in New England. *Compare Hildreth, I., 278.*

Yet this very law has been gravely cited in a paper communicated to the Massachusetts Historical Society, and twice reprinted in its publications without challenge or correction, as an evidence that "so far as it felt free to follow its own inclinations, uncontrolled by the action of the mother country, Massachusetts was hostile to slavery as an institution." *M. H. S. Coll., IV., IV., 334. Proc., 1855-58, p. 189.*

And with the statute before them, it has been persistently asserted and repeated by all sorts of authorities, historical and legal, up to that of the Chief Justice of the Supreme Court of the Commonwealth, that "slavery to a certain extent seems to have crept in; not probably by force of any law, for none such is found or known to exist." *Commonwealth vs. Aves, 18 Pickering, 208. Shaw, C. J.*

The leading case in Massachusetts is that of *Winchendon vs. Hatfield in error, IV Mass. Reports, 123.* It relates to the settlement of a negro pauper who had been a slave as early as 1757, and passed through the hands of nine separate owners before 1775. From the ninth he absconded, and enlisted in the Massachusetts Army among the eight-months' men, at Cambridge, in the beginning of the Revolutionary War. His term of service had not expired when he was again sold, in July, 1776, to another citizen of Massa-

chufetts, with whom he lived about five weeks, when he enlisted into the three-years' service, and his last owner received the whole of his bounty and part of his wages.

EDOM LONDON, for such was the name of this revolutionary patriot, in 1806 was "poor," and "had become chargeable" to the town in which he resided. That town magnanimously struggled through all the Courts, from the Justices Court up to the Supreme Court of the Commonwealth, to shift the responsibility for the maintenance and support of the old soldier from itself to one of the numerous other towns in which he had sojourned from time to time as the slave of his eleven masters. The attempt was unsuccessful; but it is worthy of notice, as Chief Justice Parsons, in the decision on the appeal, settled several very important points concerning the laws of slavery in Massachusetts. He said:

"Slavery was introduced into this country [Massachusetts] soon after its first settlement, and was tolerated until the ratification of the present Constitution [the Constitution of 1780]. . . . The issue of the female slave, according to the maxim of the Civil law, was the property of her master."

With regard to this latter point, Chief Justice Dana, in directing a jury, in 1796, had stated as the unanimous opinion of the Court, that a negro born in the State before the Constitution of 1780, was born free, although born of a female slave.

Chief Justice Parsons, however, candidly declared that "it is very certain that the general practice and common usage had been opposed to this opinion."

Chief Justice Parker, in 1816, cautiously confirmed this view of the subject by his predecessor. *Andover vs. Canton*, 13 *Mafs. Reports*, 551-552.

“The practice was . . . to consider such issue as slaves, and the property of the master of the parents, liable to be sold and transferred like other chattels, and as assets in the hands of executors and administrators.” He adds, “we think there is no doubt that, at any period of our history, the issue of a slave husband and a free wife would have been declared free.”¹

“His children, if the issue of a marriage with a slave, would, immediately on their birth, become the property of his master, or of the master of the female slave.”

Notwithstanding all this, in Mr. Sumner’s famous speech in the Senate, June 28, 1854, he boldly asserted that “in all her annals, no person was ever born a slave on the soil of Massachusetts,” and “if, in point of fact, the issue of slaves was sometimes held in bondage, it was never by sanction of any statute-law of Colony or Commonwealth.”

And recent writers of history in Massachusetts have assumed a similar lofty and positive tone on this subject. Mr. Palfrey says: “In fact, no person was ever born into legal slavery in Massachusetts.” *Hist. N. E.*, II., 30, *note*. Neither Mr. Sumner nor Mr. Palfrey give any authorities for their statements be-

¹ Kendall, who travelled through the northern parts of the United States in the years 1807 and 1808, referring to this subject, says: “While slavery was maintained in Massachusetts, there was a particular temptation to negroes for taking Indian wives, the children of Indian women being acknowledged to be free.” *Travels*, II., 179. See *Hist. Coll. Essex Institute*, Vol. VII., p. 73. *Case of Priscilla, &c., against Simmons*.

yond the cases in *Massachusetts Reports*, iv., 128, 129; xvi., 73, and *Cushing's Reports*, x., 410, which are also referred to by Mr. Justice Gray in a still more recent and authoritative publication. The distinguished ability of this gentleman, so long recognized and acknowledged at the bar in Massachusetts, will do ample honor to the bench to which he is so justly advanced. We entertain the highest respect for his attainments, his judgment, and his critical sagacity; but in this instance we think he has fallen into a serious error, which not even the great weight of his authority can establish or perpetuate in history.

In an elaborate historical note to the case of *Oliver vs. Sale*, *Quincy's Reports*, 29, he says:

“Previously to the adoption of the State Constitution in 1780, negro slavery existed to some extent, and negroes held as slaves might be sold, but *all children of slaves were by law free.*”

So distinct and positive an assertion should have been fortified by unequivocal authority. In this case Mr. Gray gives us two or three dozen separate references. These are numerous and conclusive enough as to the facts in the first clauses of his statement—that negro slavery existed in Massachusetts, and that negro slaves might be sold; but for the last and most important part of it, that *all children of slaves were by law free*,¹ there is not an iota of evidence or author-

¹ In the case of *Newport vs. Billing*, which Mr. Gray believes to have been “the latest instance of a verdict for the master,” it was found by the highest court in Massachusetts, on appeal from a similar decision in the inferior court, “that the said Amos [Newport] was not a freeman, as he alleged, but the proper slave of the said Joseph [Billing]. *Records*, 1768, fol. 284. As this seems to have been one of the so-called “freedom

ity in the entire array, excepting the opinion of the Court in 1796, already referred to.

This "unanimous opinion of the Court," in 1796, which has been so often quoted to sustain the reputation of Massachusetts for early and consistent zeal against slavery, will hardly suffice to carry the weight assigned to it. In the first place, the facts proved to the jury in the case itself were set at naught by the Court in the statement of this opinion. We quote them, omitting the peculiar phraseology by which they are disguised in the report.

An action was brought by the inhabitants of Littleton, to recover the expense of maintaining a negro, against Tuttle, his former master. It was tried in Middlesex, October Term, 1796. The negro's name was Cato. His father, named Scipio, was a negro slave when Cato was born, the property of Nathan Chase, an inhabitant of Littleton. Cato's mother, named Violet, was a negro in the same condition, and the property of Joseph Harwood. Scipio and Violet were lawfully married, and had issue, Cato, born in Littleton, January 18th, 1773, a slave, the property of the said Harwood, as the owner of his mother. *Mass. Reports*, iv., 128, *note*.

But whatever may be inferred from these facts taken in connection with the "opinion" of the Court, in 1796, we ask the attention of the reader to another case a little later, before the same tribunal. In the case of *Perkins, Town Treasurer of Topsfield, vs. Emerson*, tried in Essex, the Court held that a certain negro

cases," it is to be regretted that Mr. Gray did not ascertain from the files whether "the said Amos" was a native of Massachusetts!

girl born in the Province in Wenham in 1759, was a slave belonging to Emerson from 1765 to 1776, when she was freed. This decision was in November, 1799. *Dane's Abridgment*, II., 412. Thus it appears that the Supreme Judicial Court of Massachusetts instructed a jury in 1796, by an unanimous opinion, that a negro born in the State before the Constitution of 1780, was born free, although born of a female slave. Three years later, the same Court and the same judges (three out of four),¹ held a negro girl born in the province in 1759 to have been the lawful slave of a citizen of Massachusetts from 1765 to 1776. In the latter case, too, the decision of the Court was given on the question of law alone, as presented upon an agreed statement of the facts. *MS. Copy of Court Records.*

A case in Connecticut presents an illustration of great importance. It is that of "a fugitive slave, and attempted rescue, in Hartford, 1703," of which an account is given in one of Mr. J. Hammond Trumbull's admirable articles on some of the Connecticut Statutes. *Historical Notes, etc.*, No. VI.

"The case laid before the Honorable General Assembly in October, 1704," after a statement of facts, etc., proceeds with reasons for the return of the fugitive, some of which we quote.

¹ The judges present at these Terms respectively were the following, viz. :

October Term, 1796, in Middlesex :

Francis Dana, *Chief Justice.*
Robert Treat Paine,
Increase Sumner,
Nathan Cushing,
Thomas Dawes, jr., *Justices.*

November Term, 1799, in Essex :

Francis Dana, *Chief Justice.*
Robert Treat Paine,
Theophilus Bradbury,
Nathan Cushing, *Justices.*

“ 1. According to the laws and constant practice of this colony and all other plantations, (as well as by the civil law) such persons as are born of negro bond-women are themselves in like condition, that is, born in servitude. Nor can there be any precedent in this government, or any of her Majesty's plantations, produced to the contrary.¹ And though the law of this colony doth not say that such persons as are born of negro women and supposed to be mulattoes, shall be slaves, (which was needless, because of the constant practice by which they are held as such,) yet it saith expressly that ‘no man shall put away or make free his negro or mulatto slave,’ etc., which undeniably shows and declares an approbation of such servitude, and that mulattoes may be held as slaves within this government.”

The value of this testimony on the subject is enhanced by the character and position of the witness. He was Gurdon Saltonstall, born in Massachusetts, the son of a magistrate, educated at Harvard College, and afterwards Governor of Connecticut,—“at that time the popular minister of the New London church, and nearly as distinguished at the bar as in the pulpit. The friend and confidential adviser of the governor (Winthrop), who was one of his parishioners, his influence was already felt in the Colonial Councils, and he was largely entrusted with the management of public affairs. In general scholarship, and in the extent of his professional studies, both in divinity and law, he had probably no superior in the colony: as an advo-

¹ Lay, in his tract “*All Slave-Keepers Apostates*,” p. 11., enumerating the hardships of the institution, says, “Nor doth this satisfy, but their children also are kept in slavery, *ad infinitum*; . . .”

cate, according to the testimony of his contemporaries, he had no equal." *J. Hammond Trumbull's Historical Notes. Backus*, II., 35. *Trumbull's Connecticut, Vol. 1.* (1797), 417. Mr. Trumbull also mentions a question raised in 1722, as to the status of the children of Indian captive-slaves, in a memorial to the Legislature, from which it is apparent that no doubt was entertained as to the legal slavery of children of negroes or imported Indians from beyond seas.

Ample evidence is given elsewhere in these notes of the fact, that the children of slaves were actually held and taken to be slaves, the property of the owners of the mothers, liable to be sold and transferred like other chattels and as assets in the hands of executors and administrators.¹ This fact comes out in many portions of this history; there is no one thing more patent to the reader. The instances are numerous, and it is needless to recapitulate them here; but it may be proper to refer to the facts that in the instructions of the town of Leicester to their representative in 1773, among the ways and means suggested for extinguishing slavery, they proposed "that every negro child that shall be born in said government after the enacting such law should be free at the same age that the children of white people are," and in the petition of the negro slaves for relief in

¹ "A bill of sale, or other formal instrument, was not necessary to transfer the property in a slave, which was a mere personal chattel, and might pass, as other chattels, by delivery." *Milford vs. Bellingham*, 16 *Mas. Reports*, 110. Governor Dudley's report to the Board of Trade on slaves and the slave-trade in Massachusetts, etc., in 1708, stated that "in Boston, there are 400 negro servants, one half of whom were born here." *Collections Amer. Stat. Assoc.*, I., 586.

1777 to the General Court of Massachusetts, they humbly pray that "their children (who were born in this land of liberty) may not be held as slaves after they arrive at the age of twenty-one years." *Mafs. Archives. Revolutionary Resolves, Vol. VII., p. 132.*

The Articles of Confederation of the United Colonies of New England, 19th May, 1643, which commence with the famous recital of their object in coming into those parts of America, viz., "to advance the Kingdome of our Lord Jesus Christ, and to enjoy the liberties of the Gospell in puritie with peace," practically recognize the lawful existence of slavery.

The fourth Article, which provides for the due adjustment of the expenfe or "charge of all juft warrs whether offensive or defensive," concludes as follows :

"And that according to their different charge of eich Jurifdiccon and plantacon, the whole advantage of the warr (if it please God to blefs their Endeavours) whether it be in lands, goods, or PERSONS, shall be proportionably devided among the said Confederats." *Hazard, II., 3. Plymouth Records, IX., 4.* The same feature remained in the Constitution of the Confederacy to the end of its existence.¹ See *Ratification of 1672. Plymouth Records, X., 349.*

The original of the Fugitive Slave Law provision in the Federal Constitution is to be traced to this

¹ The agreement between Leifler of New York, and the Commissioners of Massachusetts, Plymouth, and Connecticut, May 1, 1690, provided that "all plunder and captives (if any happen) shall be divided to y^e officers and soldiers according to y^e Custome of Warr." *N. Y. Doc. Hist., II., 134, 157.* Stoughton and Sewall were the Commissioners for Massachusetts.

Confederacy, in which Massachusetts was the ruling colony. The Commissioners of the United Colonies found occasion to complain to the Dutch Governor in New Netherlands, in 1646, of the fact that the Dutch agent at Hartford had harbored a fugitive Indian woman-slave, of whom they say in their letter: "Such a servant is parte of her master's estate, and a more considerable parte than a beast." A provision for the rendition of fugitives, etc., was afterwards made by treaty between the Dutch and the English. *Plymouth Colony Records*, ix., 6, 64, 190.

Historians have generally supposed that the transactions in 1644-5, in which Thomas Keyser and one James Smith, the latter a member of the church of Boston, were implicated, "first brought upon the colonies the guilt of participating in the traffic in African slaves." *Bancroft*, 1., 173-4.

The account which we have given of the voyage of the first colonial slave-ship, the *Desire*, shows this to have been an error, and that which we shall give of these transactions will expose another of quite as much importance.

Hildreth, in whose history the curious and instructive story of New England theocracy is narrated with scrupulous fidelity, gives so clear an account of this business as to require little alteration, and we quote him with slight additions, and references to the authorities, which he does not give in detail.

This affair has been magnified by too precipitate an admiration into a protest on the part of Massachusetts against slavery and the slave-trade. So far, however, from any such protest being made, the first code

of laws in Massachusetts established slavery, as we have shown, and at the very birth of the foreign commerce of New England the African slave-trade became a regular business. The ships which took cargoes of staves and fish to Madeira and the Canaries were accustomed to touch on the coast of Guinea to trade for negroes, who were carried generally to Barbadoes or the other English Islands in the West Indies, the demand for them at home being small.¹ In the case referred to, instead of buying negroes in the regular course of traffic, which, under the fundamental law of Massachusetts already quoted, would have been perfectly legal,² the crew of a Boston ship joined with some London vessels on the coast, and, on pretence of some quarrel with the natives, landed a "murderer"—the expressive name of a small piece of cannon—attacked a negro village on Sunday, killed many of the inhabitants, and made a few prisoners, two of whom fell to the share of the Boston ship. In the course of a lawsuit between the master, mate, and owners, all this story came out, and one of the magistrates presented a petition to the General Court, in which he charged the master and mate with a threefold offence,

¹ "One of our ships, which went to the Canaries with pipe-staves in the beginning of November last, returned now [1645] and brought wine, and sugar, and salt, and some tobacco, which she had at Barbadoes, *in exchange for Africoes, which she carried from the Isle of Maio.*" *Winthrop's Journal*, II., 219.

² In awarding damages to Captain Smith against his associate in this business, they would allow him nothing for the negroes; but the reason they give is worth quoting here:

"4. * * For the negars (*they being none of his, but stolen*) we thinke meete to allowe nothing." *Mass. Records*, II., 129.

This was "the Court's opinion" "by both howses." *Ib.*, III., 58.

murder, man-stealing, and Sabbath-breaking; the two first capital by the fundamental laws of Massachusetts, and all of them "capital by the law of God." The magistrates doubted their authority to punish crimes committed on the coast of Africa; but they ordered the negroes to be sent back, as having been procured not honestly by purchase, but unlawfully by kidnapping. *Hildreth*, I., 282. *Mafs. Records*, II., 67, 129, 136, 168, 176, 196; III., 46, 49, 58, 84. *Winthrop's Journal*, II., 243, 379.

In all the proceedings of the General Court on this occasion, there is not a trace of anti-slavery opinion or sentiment,¹ still less of anti-slavery legislation; though both have been repeatedly claimed for the honor of the colony.

III

THE colonists of Massachusetts assumed to themselves "a right to treat the Indians on the footing of Canaanites or Amalekites," and practically regarded them from the first as forlorn and wretched heathen, possessing few rights which were entitled to respect. *Bancroft*, III., 408. *Bp. Berkeley's Works*, III., 247.

¹ It is possible that the petition referred to in the following extract from the Records may have related to this subject; but it left no impression which can be traced.

"29 May, 1644. Mr. Blackleach his petition about the Mores was consented to, to be committed to the elders, to enforme us of the mind of God herein, & then further to consider it." *Mafs. Records*, II., 67. Mr. John Blackleach, a merchant, was of Salem as early as 1634, and representative in 1636. Some of his letters are printed in *M. H. S. Coll.*, IV., vii., 146-155.

Sermon before the Soc. for the Prop. of the Gospel, 1731, p. 19. Cotton Mather's speculations on their origin illustrate the temper of the times.

“ We know not *When* or *How* these Indians first became Inhabitants of this mighty Continent, yet we may guess that probably the Devil decoy'd these miserable Salvages hither, in hopes that the Gospel of the Lord Jesus Christ would never come here to destroy or disturb his *Absolute Empire* over them.” *Magnalia*, Book III., Part III.

The instructions from the Commissioners of the United Colonies to Major Gibbons, on being sent against the Narragansetts in 1645, further illustrates this spirit.

He was directed to have “ due regard to the honour of God, who is both our sword and shield, and to the distance which is to be observed betwixt Christians and Barbarians, as well in warres as in other negociations.” Of this Hutchinson says: “ It was indeed strange that men, who professed to believe that God hath made of one blood all nations of men for to dwell on all the face of the earth, should upon every occasion take care to preserve this distinction. Perhaps nothing more effectually defeated the endeavors for Christianizing the Indians. It seems to have done more: to have sunk their spirits, led them to intemperance, and extirpated the whole race.” *Hutchinson's Collection of Papers*, 151.

In 1646, the Commissioners of the United Colonies made a very remarkable order, practically authorizing, upon complaint of trespass by the Indians, the seizure of “ any of that plantation of Indians that shall

entertain, protect, or rescue the offender." The order further proceeds: "And, because it will be chargeable keeping Indians in prison, and if they should escape, they are like to prove more insolent and dangerous after, that upon such seizure, the delinquent or satisfaction be againe demanded, of the Sagamore or plantation of Indians guilty or accessory as before, and if it be denyed, that then the magistrates of the Jurisdiction deliver up the Indians seized to the party or parties indamaged, either to serve, or to be shipped out and exchanged for Negroes as the cause will justly beare."

Plymouth Records, ix., 71.

The Commissioners themselves were not blind to the severity of this proceeding, although they alleged that it was "just."

There are here two features of historical importance which the reader will not fail to notice, viz., the export for trade of Indians for Negroes, and the measure of "justice" in those days between the colonists and the natives.

It may be observed that in these notes we have not drawn the lines between the Plymouth Colony and that of the Massachusetts Bay. In this connection they may justly be regarded as one; indeed, they cannot be separated, for in these and similar proceedings, to quote a significant proverb of that day, "the Plymouth saddle was always on the Bay horse."

In 1658, June 29, certain persons were punished by fines by the County Courts at Salem and Ipswich for attending a Quaker meeting and otherwise "syding with the Quakers and absenting themselves from the publick ordinances." Among them were two children,

Daniel and Provided Southwick, son and daughter to Lawrence Southwick, who were fined ten pounds, but their fines not being paid, and the parties (as is stated in the proceedings) “pretending they have no estates, resolving not to worke and others likewise have been fyned and more like to be fyned”—the General Court were called upon in the following year, May 11, 1659, to decide what course should be taken for the satisfaction of the fines.

This they did, after due deliberation, by a resolution empowering the County Treasurers to sell the said persons to any of the English nation at Virginia or Barbadoes—in accordance with their law for the sale of poor and delinquent debtors. To accomplish this they wrested their own law from its just application, for the special law concerning fines did not permit them to go beyond imprisonment for non-payment. *Mafs. Laws*, 1675, p. 51. *Felt's Salem*, 11., 581. *Mafs. Records*, iv., i., 366. *Mafs. Laws*, 1675, p. 6. *Bishop's N. E. Judged*, 85. *Hazard*, 11., 563.

The father and mother of these children, who had before suffered in their estate and persons, were at the same time banished on pain of death, and took refuge in Shelter Island, where they shortly afterwards died. *Mafs. Records*, iv., i., 367. *Hazard*, 11., 564. *Bishop*, 83. The Treasurer, on attempting to find passage for the children to Barbadoes, in execution of the order of sale, found “none willing to take or carry them.” Thus the entire design failed, only through the reluctance of these shipmasters to aid in its consummation. *Bishop*, 190. *Sewel's Hist. of the Quakers*, 1., 278.

Provided Southwick was subsequently in the same year, in company with several other Quaker ladies, "whipt with tenn stripes," and afterwards "committed to prison to be proceeded with as the law directs." *Mass. Records*, IV., i., 411.

The indignant Quaker historian, in recounting these things, says, "After such a manner ye have done to the *Servants* of the Lord, and for *speaking* to one another, . . . and for *meeting* together, ransacking *their Estates*, breaking open *their Houses*, carrying away *their Goods* and *Cattel*, till ye have left none, then their *wearing apparel*, and then (as in Plymouth government) *their Land*; and when ye have left *them nothing*, sell *them* for this which ye call *Debt*. Search the Records of former Ages, go through the Histories of the Generations that are past; read the Monuments of the Antients, and see if *ever* there were *such* a thing as this since the Earth was laid, and the Foundations thereof in the *Water*, and *out of the Water*. . . . O ye Rulers of Boston, ye Inhabitants of the *Massachusetts*! What shall I say unto *you*? Whereunto shall I liken *ye*? Indeed, I am at a stand, I have no Nation with *you* to compare, I have no People with *you* to parallel, I am at a loss with *you* in this point; I must say of *you*, as Balaam said of *Amalek* when his eyes were open, *Boston, the first of the Nations that came out thus to war against, to stop Israel in their way to Canaan from Egypt.*" *Bishop's N. E. Judged*, 90.

At the time of King Philip's War, the policy and practice of the Colony of Massachusetts, with regard
 ✓ to slavery, had been already long settled upon the basis of positive law. Accordingly the numerous

“captives taken in war” were disposed of in the usual way. The notes which follow are mainly from the official records of the colony, and will be sufficient to show the general current of public opinion and action at that period.

In August, 1675, the Council at Plymouth ordered the sale of a company of Indians, “being men, women, and children, in number one hundred and twelve,” with a few exceptions. The Treasurer made the sale “in the countryes behalfe.” *Plymouth Records*, v., 173.

A little later the Council made a similar disposition of fifty-seven more (Indians) who “had come in a submissive way.” These were condemned to perpetual servitude, and the Treasurer was ordered and appointed “to make sale of them, to and for the use of the collonie, as opportunity may present.” *Ib.*, 174.

The accounts of the Colony of Massachusetts for receipts and expenditures during “the late War,” as stated from 25th June, 1675, to the 23d September, 1676, give among the credits the following :

“By the following accounts received
in or as silver, viz. :

“Captives; for 188 prisoners at war
fold

397.13.00.”

Plymouth Records, x., 401.

There is a peculiar significance in the phrase which occurs in the Records—“sent away by the Treasurer.” It means sold into slavery. *Mass. Records*, v., 58.

The statistics of the traffic carried on by the Trea-

urers cannot be accurately ascertained from any sources now at command. But great numbers of Philip's people were sold as slaves in foreign countries. In the beginning of the war Captain Moseley captured eighty, who were confined at Plymouth. In September following one hundred and seventy-eight were put on board a vessel commanded by Captain Sprague, who sailed from Plymouth with them for Spain. *Drake, 224.*

These proceedings were not without witnesses against their injustice and inhumanity. The Apostle Eliot's earnest remonstrance is a glorious memorial of his fearless devotion to reason and humanity—to which neither rulers nor people of Massachusetts were then inclined to listen.

“To the Honorable the Governor and Council, sitting at Boston this 13^t. of the 6^t, 75, the humble petition of John Eliot, Sheweth that the terror of selling away such Indians unto the Islands for perpetual slaves, who shall yield up y^mselves to your mercy, is like to be an effectual prolongation of the warre, and such an exasperation of them, as may produce we know not what evil consequences, upon all the land. Christ hath saide, blessed are the mercifull for they shall obtain mercy. This useage of them is worse than death . . . it seemeth to me, that to sell them away for slaves is to hinder the enlargement of his [Christ's] kingdom . . . to sell soules for money seemeth to me a dangerous merchandize. If they deserve to die, it is far better to be put to death under godly governors, who will take religious care, that meanes may be used, that they may die penitently. . . . Deut. 23: 15-16.

If a fugitive servant from a Pagan Master might not be delivered to his master but be kept in Israel for the good of his soule, how much less lawful is it to sell away soules from under the light of the gospel, into a condition, where their soules will be utterly lost, so far as appeareth unto man." *Plymouth Colony Records*, x., 451-2. Compare Mather's *Magnalia*, Book VII., 109 (753), concerning the neglect to proselyte the Indians, etc.

There is nothing to show that "the Council gave heed to the petition of Eliot," but a careful examination of the archives disclosed only a report of a Committee of the General Court, dated Nov. 5, 1675, and adopted by the Magistrates and Deputies the same day, by which several were to be sent away.¹ *MS. Letter*.

In 1676, November 4th, it was ordered that whereas there is an Acte or order made by the Councill of War bearing date July, 1676, prohibiting any male

¹ Eliot appears also to have been the first in America to lift up his voice against the treatment which Negroes received in New England. Towards the end of his life, Cotton Mather states, "He had long lamented it with a Bleeding and Burning Passion, that the English used their Negro's but as their Horses or their *Oxen*, and that so little care was taken about their immortal Souls; he look'd upon it as a Prodigy, that any wearing the Name of *Christians* should so much have the Heart of *Devils* in them, as to prevent and hinder the Instruction of the poor *Blackamores*, and confine the souls of their miserable Slaves to a *Destroying Ignorance*, meerly for fear of thereby losing the Benefit of their Vassalage; but now he made a motion to the *English* within two or three Miles of him, that at such a time and Place they would send their *Negro's* once a week to him: For he would then *Catechise* them, and *Enlighten* them, to the utmost of his Power in the Things of their Everlasting Peace; however, he did not live to make much Progress in this Undertaking." *Mather's Magnalia*, Book III., 207 (325). Compare also p. 209 (327).

Indian captive to abide in this Jurisdiction that is above fourteen years of age att the beginning of his or their captivity, and in case any such should continue in the Collonie after the time then prefixed they should be forfeit to the use of the Govt, this Court sees cause to ratify and confirme that order and acte, and do therefore order; that all such as have any such Indian male captive that they shall dispose of them out of the Collonie by the first of December next on paine of forfeiting every such Indian, or Indians to the use of the Collonie; and the Constables of each town of this Jurisdiction are hereby ordered to take notice of any such Indian or Indians staying in any of the respective towns of this Collonie after the time prefixed, and shall forthwith bring them to the Treasurer to be disposed of to the use of the Government as aforesaid. *Plymouth Records*, xi., 242.

There were a few, about five or six, exceptions made to this order, in favor of certain Indians, who had been assured by Capt. Benjamin Church that they should not be sold to any foreign parts, upon good behavior, &c. *Ib.*, 242.

The Massachusetts General Court made an order in 1677, 24 May, that the Indian children, youths or girls, whose parents had been in hostility with the Colony, or had lived among its enemies in the time of the war, and were taken by force, and given or sold to any of the inhabitants of this jurisdiction, should be at the disposall of their masters or their assignes, who were to instruct them in Civility and Christian religion. *Mafs. Records*, v., 136. *Note the distinction between friendly Indians whose children were to be held*

✓ until 24 years of age, both in this order and in *Plymouth Records*, v., 207, 223.

The Court, in the following year (1678), found cause to prohibit "all and every person and persons within our jurisdiction or elsewhere, to buy any of the Indian children of any of those our captive salvages that were taken and became our lawfull prisoners in our late warrs with the Indians, without special leave, liking and approbation of the government of this jurisdiction. *Ib.*, 253.

In the succeeding year (1679), the following entry appears in the records:

"In reference unto severall Indians bought by Jonathan Hatch of Capt. Church, the brothers of the woman, desireing shee might be released, appeared in Court with the said Jonathan Hatch, and came to composition with her for the freedom of both her and her husband, which are two of the three Indians above named; and her brothers payed on that accompt the sume of three pounds silver mony of New England, and have engaged to pay three pounds more in the same specie, and then the said man and woman are to be released; and for the third of the said Indians, it being younge, the Court have ordered, that it shall abide with the said Jonathan Hatch untill it attains the age of 24 years, and then to be released for ever."

Plymouth Records, vi., 15

It were well if the record were no worse; but to all ✓ this is to be added the baseness of treachery and falsehood. Many of these prisoners surrendered, and still greater numbers came in voluntarily to submit, upon the promise that they and their wives and children

should have their lives spared, and none of them transported out of the country. In one instance, narrated by the famous Captain Church himself, no less than "eight score persons" were "without any regard to the promises made them on their surrendering themselves, carried away to Plymouth, there sold and transported out of the country." *Church*, 23, 24, 41, 51, 57. Baylies, in his *Memoir of Plymouth Colony*, Part III., pp. 47, 48, gives some additional particulars of this affair.

"After the destruction of Dartmouth, the Plymouth forces were ordered there, and as the Dartmouth Indians had not been concerned in this outrage, a negotiation was commenced with them. By the persuasions of Ralph Earl, and the promises of Captain Eels, who commanded the Plymouth forces, they were induced to surrender themselves as prisoners, and were conducted to Plymouth. Notwithstanding the promises by which they had been allured to submit, notwithstanding the earnest, vehement, and indignant remonstrances of Eels, Church, and Earl, the government, to their eternal infamy, ordered the whole to be sold as slaves, and they were transported out of the country, being about one hundred and sixty in number. So indignant was Church at the commission of this vile act, that the government never forgave the warmth and the bitterness of his expressions, and the resentment that was then engendered induced them to withhold all command from this brave, skilful, honest, open-hearted and generous man, until the fear of utter destruction compelled them, subsequently, to entrust him with a high command. This mean and treach-

erous conduct alienated all the Indians who were doubting, and even those who were strongly predisposed to join the English."

Easton, in his *Relation*, p. 21, says: "Philip being fled; about a 150 Indians came in to a Plymouth Garrison voluntarily. Plymouth authority would all for Slaves (but about six of them) to be carried out of the country."

Church's authority from Plymouth Colony to demand and receive certain fugitives (whether men, women, or children) from the authorities of Rhode Island government, August 28, 1676, is printed in *Hough's Easton's King Philip's War*, p. 188. He was "impowered to sell and dispose of such of them, and soe many as he shall see cause for, there: to the Inhabitants or others, for Term of Life, or for shorter time, as there may be reasons. And his actinge, herein, shall at all Times be owned and justified by the said Collony."

Nor did the Christian Indians or Praying Indians escape the relentless hostility and cupidity of the whites. Besides other cruelties, instances are not wanting in which some of these were sold as slaves, and under accusations which turned out to be utterly false and without foundation. *Gookin's Hist. of the Christian Indians*.

Some of them are probably referred to by Eliot, in his letter to Boyle, Nov. 27, 1683, in which he says, "I desire to take boldness to propose a request. A vessel carried away a great number of our surpris'd Indians, in the times of our wars, to sell them for slaves; but the nations, whither she went, would not

buy them. Finally, she left them at Tangier; there they be, so many as live, or are born there. An Englishman, a mason, came thence to Boston, he told me they desired I would use some means for their return home. I know not what to do in it; but now it is in my heart to move your honour, so to meditate, that they may have leave to get home, either from thence hither, or from thence to England, and so to get home. If the Lord shall please to move your charitable heart herein, I shall be obliged in great thankfulness, and am persuaded that Christ will, at the great day, reckon it among your deeds of charity done unto them, for his name's sake." *M. H. S. Coll.*, III., 183.

Cotton Mather furnishes another extract appropriate in this connection.

"Moreover, 'tis a Prophecy in Deut. 28, 68. *The Lord shall bring thee into Egypt again with ships, by the way whereof I spake unto thee. Thou shalt see it no more again; and there shall ye be sold unto your Enemies, and no Man shall buy you.* This did our Eliot imagine accomplished, when the Captives taken by us in our late Wars upon them, were sent to be sold, in the Coasts lying not very remote from Egypt on the Mediterranean Sea, and scarce any Chapmen would offer to take them off." *Mather's Magnalia*, Book III., Part III.

Mr. Everett, in one of the most elaborate of his finished and beautiful orations, has narrated the story of two of the last captives in that famous war, in a passage of surpassing eloquence which we venture to quote:

"President Mather, in relating the encounter of

the 1st of August, 1676, the last but one of the war, says, 'Philip hardly escaped with his life also. He had fled and left his *peage* behind him, also his squaw and son were taken captive, and are now prisoners at Plymouth. Thus hath God brought that grand enemy into great misery before he quite destroy him. It must needs be bitter as death to him to lose his wife and only son (for the Indians are marvellous fond and affectionate towards their children) besides other relations, and almost all his subjects, and country also.'

✓ "And what was the fate of Philip's wife and his son? This is a tale for husbands and wives, for parents and children. Young men and women, you cannot understand it. What was the fate of Philip's wife and child? She is a woman, he is a lad. They did not surely hang them. No, that would have been mercy. The boy is the grandson, his mother the daughter-in-law of good old Massafoit, the first and best friend the English ever had in New England. Perhaps—perhaps now Philip is slain, and his warriors scattered to the four winds, they will allow his wife and son to go back—the widow and the orphan—to finish their days and sorrows in their native wilderness. They are sold into slavery, West Indian slavery! an Indian princess and her child, sold from the cool breezes of Mount Hope, from the wild freedom of a New England forest, to gasp under the lash, beneath the blazing sun of the tropics! 'Bitter as death;' aye, bitter as hell! Is there anything,—I do not say in the range of humanity—is there anything animated, that would not struggle against this?"

Everett's Address at Bloody Brook, 1835; Church, 62, 63, 67, 68.

Well might the poet record his sympathy for their fate—

“ Ah ! happier they, who in the strife
For freedom fell, than o'er the main,
Those who in galling slavery's chain
Still bore the load of hated life,—
Bowed to base tasks their generous pride,
And scourged and broken-hearted, died !”

or in view of this phase of civilization and progress,
figh for that elder state, when all were

“ Free as nature first made man,
Ere the base laws of servitude began,
When wild in woods the noble savage ran.”

In the prosecution of his admirable historical labors, Ebenezer Hazard, of Philadelphia, endeavored to ascertain what was done with the son of Philip. He wrote to the late Judge Davis, of Boston, who was unable, at that time, to give a satisfactory answer. Mr. Hazard died in 1817; but Judge Davis was afterwards enabled to furnish a very interesting account of the affair, derived from documents communicated to him by Nahum Mitchell, Esq.

From these documents he learned “ that the question, whether the boy should be put to death, was seriously agitated, and the opinion of learned divines was requested on the subject. The Rev. Mr. Cotton, of Plymouth, and the Rev. Mr. Arnold, of Marshfield, gave the following answer :

“ The question being propounded to us by our
✓ honored rulers, whether Philip's son be a child of

death! Our answer, hereunto is, that we do acknowledge, that rule, Deut. 24: 16, to be morall, and therefore perpetually binding, viz., that in a particular act of wickedness, though capitall, the crime of the parent doth not render his child a subject to punishment by the civill magistrate; yet, upon ferious consideration, we humbly conceive that the children of notorious traitors, rebels, and murtherers, especially of such as have bin principal leaders and actors in such horrid villanies, and that against a whole nation, yea the whole Israel of God, may be involved in the guilt of their parents, and may, *salva republica*, be adjudged to death, as to us seems evident by the scripture instances of *Saul*, *Achan*, *Haman*, the children of whom were cut off, by the sword of Justice for the transgressions of their parents, although concerning some of those children, it be manifest, that they were not capable of being co-acters therein.

Samuel Arnold,
John Cotton."

September 7th, 1670.

The Rev. Increase Mather, of Boston, offers these sentiments on the question, in a letter to Mr. Cotton, October 30, 1676.

"If it had not been out of my mind, when I was writing, I should have said something about Philip's son. It is necessary that some effectual course should be taken about him. He makes me think of Hadad, who was a little child when his father, (the Chief Sachem of the Edomites) was killed by Joab; and, had not others fled away with him, I am apt to think, that David would have taken a course, that Hadad should never have proved a scourge to the next generation."

The Rev. James Keith, of Bridgewater, took a different view of the subject, and gave more benignant interpretations. In a letter to Mr. Cotton of the same date with Dr. Mather's, he says, "I long to hear what becomes of Philip's wife and his son. I know there is some difficulty in that psalm, 137, 8, 9, though I think it may be considered, whether there be not some specialty and somewhat extraordinary in it. That law, Deut. 24: 16, compared with the commended example of Amasias, 2 Chron. 25: 4, doth sway much with me, in the case under consideration. I hope God will direct those whom it doth concern to a good issue. Let us join our prayers, at the throne of grace, with all our might, that the Lord would so dispose of all public motions and affairs, that his Jerusalem in this wilderness may be the habitation of justice and the mountain of holiness; that so it may be, also, a quiet habitation, a tabernacle that shall not be taken down."

The question thus seriously agitated would not, in modern times, occur in any nation in Christendom. Principles of public law, sentiments of humanity, and the mild influence of the Gospel, in preference to a recurrence of the Jewish dispensation, so much regarded by our ancestors in their deliberations and decisions,¹ would forbid the thought of inflicting punishment on children for the offences of a parent. It is gratifying to learn, that, in this instance, the meditated severities were not carried into execution, but that the merciful

¹ In this discussion, however, both scripture rule and example were in favour of the prisoner. The case quoted by Mr. Keith from 2 Chronicles is directly in point. "But he slew not their children, but did as it is written in the law in the book of Moses," &c.

spirit manifested in Mr. Keith's suggestions prevailed. In a letter from Mr. Cotton to his brother Mather, on the 20th of March following, on another subject, there is this incidental remark: 'Philip's boy goes now to be sold.'" *Davis's Morton's Memorial, Appendix, pp. 353-5.*

In the winter of 1675-6, Major Waldron, a Commissioner, and Magistrate for a portion of territory claimed by Massachusetts (now included in that of Maine), issued general warrants for seizing every Indian known to be a manlayer, traitor, or conspirator. These precepts, which afforded every man a plausible pretext to seize suspected Indians, were obtained by several shipmasters for the most shameful purposes of kidnapping and slave-trading. One with his vessel lurked about the shores of Pemaquid, and notwithstanding warning and remonstrance, succeeded in kidnapping several of the natives, and, carrying them into foreign parts, sold them for slaves. Similar outrages were committed farther east upon the Indians about Cape Sable, "who never had been in the least manner guilty of any injury done to the English." Hubbard adds to his account of this affair, "the thing alleadged is too true as to matter of Fact, and the persons that did it, were lately committed to prison in order to their further tryal." If the careful research of Massachusetts antiquarians can discover any record of the trial, conviction and *just* punishment of these offenders, it will be an honorable addition to their history—far more creditable than the constant reiteration of the story of "the negro interpreter" in 1646, which has been so long in service, "to bear witness against y^o

haynos and crying finn of man-stealing," in behalf of "The Gen^rall Co^rte" of Massachusetts. *Hubbard's Narrative*, 1677, pp. 29, 30. *Williamson's Maine*, 1., 53¹.

After the death of King Philip, some of the Indians from the west and south of New England who had been engaged in the war, endeavored to conceal themselves among their brethren of Penacook who had not joined in the war, and with them of Ossapy and Pigwackett who had made peace.

By a "contrivance" (as Mather calls it) which favors strongly of treachery, four hundred of these Indians were taken prisoners, one half of whom were declared to have been accessories in the late rebellion; and being "sent to Boston, seven or eight of them, who were known to have killed any Englishmen, were condemned and hanged; the rest were sold into slavery in foreign parts."

Some of those very Indians, who were thus seized and sold, afterwards made their way home, and found opportunity to satisfy their revenge during the war with the French and Indians known as King William's War. *Belknap*, 1., 143, 245. *Mather's Magnalia*, Book VII., 55 (699).

IV.

At first, the number of slaves in Massachusetts was comparatively small, and their increase was not large until towards the close of the seventeenth century. Edward Randolph, in 1676, in an answer to several

heads of inquiry, &c., stated that there were "not above 200 slaves in the colony, and those are brought from Guinea and Madagascar." He also mentioned that some ships had recently sailed to those parts from Massachusetts. *Hutchinson's Collection of Papers*, pp. 485, 495. Governor Andros reported that the slaves were not numerous in 1678—"not many servants, and but few slaves, proportionable with freemen." *N. Y. Col. Doc.*, III., 263.

In May, 1680, Governor Bradstreet answered certain Heads of Inquiry from the Lords of the Committee for Trade and Foreign Plantations. Among his statements are the following:

"There hath been no company of blacks or slaves brought into the country since the beginning of this plantation, for the space of fifty years, onely one small Veffell about two yeares since, after twenty months' voyage to Madagascar, brought hither betwixt forty and fifty Negroes, most women and children, sold here for 10*l.*, 15*l.* and 20*l.* apiece, which stood the merchant, in near 40*l.* apiece: Now and then, two or three Negroes are brought hither from Barbadoes and other of his Majestie's plantations, and sold here for about twenty pounds apiece. So that there may be within our Government about one hundred or one hundred and twenty. . . . There are a very few blacks borne here, I think not above [five] or six at the most in a year, none baptized that I ever heard of. . ." *M. H. S. Coll.*, III., viii., 337.

The following century changed the record. Many "companies" of slaves were "brought into the country," and the institution flourished and waxed strong.

Judge Sewall referred to the "numerousness" of the slaves in the province in 1700. Gov. Dudley's report to the Board of Trade, in 1708, gave four hundred as then in Boston, one half of whom were born there; and in one hundred other towns and villages one hundred and fifty more—making a total of five hundred and fifty. He stated that negroes were found unprofitable, and that the planters there preferred white servants "who are serviceable in war presently, and after become planters." From January 24, 1698, to 25 December, 1707, two hundred negroes arrived in Massachusetts.

Gov. Shute's information to the Lords of Trade, in 1720, Feb. 17, gave the number of slaves of Massachusetts at 2,000, including a few Indians. He added that, during the same year, thirty-seven male and sixteen female negroes were imported, with the remark, "No great difference for seven years last past." *Felt, Coll. Amer. Stat. Assoc.*, 1., 586.

In 1735, there were 2,600 negroes in the Province. In 1742, there were 1,514 in Boston alone. *Douglass*, 1., 531. These are probably very imperfect estimates, as it is well known that regular enumerations of the population were considered very objectionable by the people of the Bay. Some recalled the numbering of Israel by David, and perhaps all were jealous of the possible designs of the Government in England in obtaining accurate information of their numbers and resources. It is a curious fact that the first census in Massachusetts, was a census of negro slaves.

In 1754, an account of property in the Province liable to taxation being required, Gov. Shirley sent a

special message to the House of Representatives, in which he said :

“ There is one part of the Estate, viz., the Negro Slaves, which I am at a loss how to come at the knowledge of, without your assistance.” *Journal*, p. 119.

On the same day, November 19, 1754, the Legislature made an order that the Assessors of the several towns and districts within the Province, forthwith send into the secretary's office the exact number of the negro slaves, both males and females, sixteen years old and upwards, within their respective towns and districts. *Ib.*¹

This enumeration, as corrected by Mr. Felt, gives an aggregate of 4,489. The census of Negroes in 1764-5, according to the same authority, makes their number 5,779, in 1776, 5,249; in 1784, 4,377, in 1786, 4,371; and in 1790 (by the United States census) 6,001.²

The royal instructions to Andros, in 1688, as

¹ There is a curious illustration of “ the way of putting it ” in Massachusetts, in Mr. FELT's account of this “ census of slaves,” in the *Collections of the American Statistical Association*, Vol. I., p. 208. He says that the General Court passed this order “ for the purpose of having an accurate account of slaves in our Commonwealth, as a subject in which the people were becoming much interested, relative to the cause of liberty ! ” There is not a particle of authority for this suggestion—such a motive for their action never existed anywhere but in the imagination of the writer himself !

² It is to be regretted that we have no official authorities on the subject of the changes in this class of population during the period from 1776 to 1784. There is a most extraordinary, if not incredible, statement made by the Duke de la Rochefoucault Liancourt in his *Travels through the United States . . . in the years 1795, 1796, and 1797*, of which a translation was published in London in 1799. In that work, Vol. II., page 166, he says, “ It is to be observed, that, in 1778, the general census of Massachusetts included eighteen thousand slaves, whereas the subsequent census of 1790 exhibits only six thousand blacks.”

Governor of New England, required him to "pass a law for the restraining of inhuman severity which may be used by ill masters or overseers towards the Christian servants or slaves; wherein provision is to be made that the wilful killing of Indians and Negroes be punished with death, and a fitt penalty imposed for the maiming of them." *N. Y. Col. Doc.*, III., 547. The reader will note the distinction in these instructions between the *Christian* servants or slaves, and the *Indians and Negroes*. It points to a feature of slavery in Massachusetts, at that time, which we propose to notice in another portion of these notes.

The Law of 1698, Chapter 6, forbids trading or trucking with any "Indian, molato or negro servant or slave, or other known dissolute, lewd, and disorderly persons, of whom there is just cause of suspicion." Such persons were to be punished by whipping for so trading with money or goods improperly obtained.

The Law of 1700, Chapter 13, was enacted to protect the Indians against the exactions and oppression which some of the English exercised towards them "by drawing them to consent to covenant or bind themselves or children apprentices or servants for an unreasonable term, on pretence of or to make satisfaction for some small debt contracted or damage done by them." Other similar acts were afterwards passed in 1718 and 1725, the latter having a clause to protect them against kidnapping.

In 1701, the Representatives of the town of Boston were "desired to promote the encouraging the bringing of white servants, and to put a period to Negroes being slaves." *Drake's Boston*, 525. *M. H. S. Coll.*, II.,

viii., 184. We have no knowledge of the efforts made under this instruction of the town of Boston, but they failed to accomplish anything. Indeed, the very next enactment concerning slavery was a step backward instead of an advance towards reform—a measure which turned out to be a permanent and effective barrier against emancipation in Massachusetts.

The Law of 1703, Chapter 2, was in restraint of the “Manumission, Discharge, or Setting free” of “Molatto or Negro slaves.” Security was required against the contingency of these persons becoming a charge to the town, and “none were to be accounted free for whom security is not given;” but were “to be the proper charge of their respective masters or mistresses, in case they stand in need of relief and support, notwithstanding any manumission or instrument of freedom to them made or given,” etc.¹ A practice was prevailing to manumit aged or infirm slaves, to relieve the master from the charge of supporting them. To prevent this practice, the act was

¹ Jonathan Sewall, writing to John Adams, February 31, 1760, puts the following case:

“A man, by will, gives his negro his liberty, and leaves him a legacy. The executor consents that the negro shall be free, but refuseth to give bond to the selectmen to indemnify the town against any charge for his support, in case he should become poor, (without which, by the province law, he is not manumitted,) or to pay him the legacy.

Query. Can he recover the legacy, and how?

John Adams, in reply, after illustrating in two cases the legal principle that the intention of the testator, to be collected from the words, is to be observed in the construction of a will, applied it to the case presented as follows, viz. :

“The testator plainly intended that his negro should have his liberty and a legacy; therefore the law will presume that he intended his executor should do all that without which he could have neither. That this in-

passed. *C. J. Parsons. Winchendon vs. Hatfield in error*, iv *Mafs. Reports*, 130. This act was still in force as late as June, 1807, when it was reproduced in the revised laws, and continued until a much later period to govern the decisions of courts affecting the settlement of town paupers. An unsuccessful attempt to repeal it, will be found duly noticed in a subsequent portion of these notes.

The Law of 1703, Chapter 4, prohibited Indian, Negro and Molatto servants or slaves, to be abroad after nine o'clock, etc.

The Law of 1705, Chapter 6, "for the better preventing of a Spurious and Mixt Issue, &c.;" punishes Negroes and Molattoes for improper intercourse with whites, by felling them out of the Province. It also

dennification was not in the testator's mind, cannot be proved from the will any more than it could be proved, in the first case above, that the testator did not know a fee simple would pass a will without the word heirs; nor than, in the second case, that the devise of a trust, that might continue for ever, would convey a fee simple without the like words. I take it, therefore, that the executor of this will is, by implication, obliged to give bonds to the town treasurer, and, in his refusal, is a wrong doer; and I cannot think he ought to be allowed to take advantage of his own wrong, so much as to allege this want of an indemnification to evade an action of the case brought for the legacy by the negro himself.

But why may not the negro bring a special action of the case against the executor, setting forth the will, the devise of freedom and a legacy, and then the necessity of indemnification by the province law, and then a refusal to indemnify, and, of consequence, to set free and to pay the legacy?

Perhaps the negro is free at common law by the devise. Now, the province law seems to have been made only to oblige the master to maintain his manumitted slave, and not to declare a manumission in the master's lifetime, or at his death, void. Should a master give a negro his freedom, under his hand and seal, without giving bond to the town, and should afterwards repent and endeavor to recall the negro into servitude, would not that instrument be a sufficient discharge against the master?" *Adams' Works*, I., 51, 55.

punishes any Negro or Mólatto for striking a Christian, by whipping at the discretion of the Justices before whom he may be convicted. It also prohibits marriage of Christians with Negroes or Molattoes—and imposes a penalty of Fifty Pounds upon the persons joining them in marriage. It provides against unreasonable denial of marriage to Negroes with those of the same nation, by any Master—“any Law, Usage, or Custom, to the contrary notwithstanding.”

This proviso against the unreasonable denial of marriage to negroes is very interesting. Legislation against the arbitrary exercise and abuse of authority proves its existence and the previous practice. It was as true then as it is now that the institution of slavery was inconsistent with the just rules of Christian morality.

In Pennsylvania, five years before, William Penn had proposed to his Council, “the necessitie of a law [among others] about y^e marriages of negroes.” The subject was referred to a committee of both houses of the legislature, and resulted in a Bill in the Assembly, “for regulating *Negroes* in their Morals and Marriages, etc.,” which was twice read and rejected. *Penn. Col. Rec.*, I., 598. 606. *Votes of Assembly*, I., 120, 121. This proposition of Penn was in accordance with the views of George Fox, whose testimony in regard to the treatment of slaves, given at Barbadoes in 1671, is elsewhere referred to in these notes. In his “Gospel Family Order, being a short discourse concerning the Ordering of Families, both of Whites, Blacks, and Indians,” he particularly enforced the necessity of

looking after the marriages of the blacks, to see that there was some order and solemnity in the manner, and that the marriages should be recorded, and should be binding for life. See *The Friend*, Vol. xvii. 29, 4to., *Phil.* 1843.

No Christian man or woman, Quaker or Puritan, could fail to be shocked at the looseness of all such ties and relations under the slave system. One solitary witness against slavery in Massachusetts in 1700, referred to the well known "Temptations Masters were under to connive at the Fornication of their Slaves, lest they should be obliged to find them Wives or pay their Fines." *Sewall*, 1700. The laws against the irregular commerce of the sexes were an awkward part of a system which established and protected slavery, and marriage (such as it was) saved the expense of constant fines to masters and mistresses for delinquent slaves.

But what protection was there for the married state or sanction of marital or parental rights and duties? This law did not and could not protect or sanction either, and must have been of little practical value to the slaves. Governed by the humor or interest of the master or mistress, their marriage was not a matter of choice with them, more than any other action of their life. Who was to judge whether the denial of a master or mistress was unreasonable or not? And what remedy had the slave in case of denial?¹ The owner of a valuable female slave was to

¹ The case of *The Inhabitants of Stockbridge vs. The Inhabitants of West Stockbridge*—regarding the settlement of a negro pauper (who had been a soldier in the American Army of the Revolution) presents a decision of the

consider what all the risks of health and life were to be, and whether the increase of stock would reimburse the loss of service.¹

The breeding of slaves was not regarded with favor.² Dr. Belknap says, that "negro children were considered an incumbrance in a family; and when weaned, were given away like puppies." *M. H. S. Coll.*, 1., iv., 200. They were frequently publicly advertised "to be given away,"—sometimes with the additional inducement of a sum of money to any one who would take them off.

At the same time there is no room for doubt that there were public and legalized marriages among slaves in Massachusetts, subsequently to the passage of this act of 1705. Mr. Justice Gray states that, "the subsequent records of Boston and other towns show that their banns were published like those of white persons."³

Supreme Judicial Court of Massachusetts in 1817, not only recognizing the fact of the absolute legal continuance of slavery in that State in the years 1770–1777; but settling a point of law which is interesting in this connection. At that time "*no contract made with the slave was binding on the master; for the slave could have maintained no action against him, had he failed to fulfil his promise* [a promise to emancipate] which was an undertaking merely voluntary on his part." *Mass. Reports*, xiv., 257.

¹ A Bill of Sale of a Negro Woman Servant in Boston in 1724, recites that "Whereas Scipio, of Boston aforesaid, Free Negro Man and Laborer, purposes Marriage to Margaret, the Negro Woman Servant of the said Dorcas Marshall [a Widow Lady of Boston]: Now to the Intent that the said Intended Marriage may take Effect, and that the said Scipio may Enjoy the said Margaret without any Interruption," etc., she is duly sold, with her apparel, for Fifty Pounds. *N. E. Hist. and Gen. Reg.*, xviii., 78.

² So early as the poet Hesiod, married slaves, whether male or female, were esteemed inconvenient. *Works and Days*, line 406, also 602–3.

³ Mr. Charles C. Jones, of Georgia, in his work on the *Religious Instruction of the Negroes in the United States*, published at Savannah, in 1842, gives, pp. 34, 35, memoranda of four instances of the kind, which he ob-

In 1745, a negro slave obtained from the Governor and Council a divorce for his wife's adultery with a white man. In 1758, it was adjudged by the Superior Court of Judicature, that a child of a female slave 'never married according to any of the forms prescribed by the laws of this land,' by another slave, who 'had kept her company with her master's consent,' was not a bastard." *Quincy's Reports*, 30, note. This judgment indicates liberal views with regard to the law of marriage as applied to slaves, although we suspect there was special occasion for the exercise of charity and mercy which might deprive it of any authority as a leading case.

It is perfectly well known that it was practically settled in Massachusetts that baptism was not emancipation—although there is no evidence in their statutes to show that the question was ever mooted in that colony, as it was in other colonies, where legislation was found necessary to establish the doctrine.

Still it was in the power of masters in Massachusetts to deny baptism to their slaves, as appears from the following extract, from Matthias Plant to the Secretary of the Society for the Propagation of the Gospel, etc. *Answers to Queries*, from Newbury, October 25, 1727 :

"6. Negroe Slaves, one of them is desirous of baptism, but denied by her Master, a woman of wonderful sense, and prudent in matters, of equal knowledge in Religion with most of her sex, far exceeding any of her own nation that ever yet I heard of."

served in looking over the old record of "Entryes for Publications" (for marriages) within the town of Boston, two in the year 1707, and two in 1710.

About baptism of slaves "borne in the house, or bought with monie," see letter of Davenport to the younger Winthrop, June 14, 1666, and postscript. *M. H. S. Coll.* III., x., 60. 62.

Mr. Palfrey gives it as his opinion, that "From the reverence entertained by the Fathers of New England for the nuptial tie, it is safe to infer that slave husbands and wives were never parted." *Hist. N. E.*, II., 30, *note*. The Fathers of New England also cherished a due regard for parental and filial duties and responsibilities, yet it is certain that slave mothers and children were separated. Resting upon "the law of God, established in Israel," the Puritan could have had no scruple about this matter—such a condition of marriage to the slave must have been regarded as an axiom as it was by the Hebrew. *Compare Exodus*, XXI., 4, 5, 6. Mr. Palfrey's inference is not warranted by the facts.

In 1786, the legislature of the State of Massachusetts passed an "Act for the orderly Solemnization of Marriage," by the seventh section whereof it was enacted "that no person authorized by this act to marry shall join in marriage any white person with any Negro, Indian or Mulatto, under penalty of fifty pounds; and all such marriages shall be absolutely null and void." The prohibition continued until 1843, when it was repealed by a special "act relating to marriage between individuals of certain races."

The statute of 1705 also provided an import duty of four pounds per head on every Negro brought into the Province from and after the 1st day of May, 1706, for the payment of which both the vessel and master

were answerable. A penalty of double the amount of the duty on each one omitted was imposed for refusal or neglect to make the prescribed entry of "Number, Names, and Sex, in the Impost Office." A drawback was allowed upon exportation, and the like advantage was allowed to the purchaser of any Negro sold within the Province, in case of the death of his Negro within six weeks after importation or bringing into the Province.

Mr. Drake says that, in 1727, "the traffic in slaves appears to have been more an object in Boston than at any period before or since." *Hist. of Boston*, 574, and in the following year (1728) an additional "Act more effectually to secure the Duty on the Importation of Negroes" was passed, by which more stringent regulations were adopted to prevent the smuggling of such property into the Province, and the drawback was allowed on all negroes dying within twelve months.

This act expired by its own limitation in 1735, but another of a similar character was passed in 1739, which recognised the old law of 1705 as being still in force.¹ It reduced the time for the drawback on the death of negroes to six months after importation.

Free Negroes not being allowed to train in the

¹ "Dec. 7, 1737, Col. Royal petitions the General Court, that, having lately arrived from Antigua, he has with him several slaves for his own use, and not to sell, and therefore prays that the duty on them be remitted. The duty was £4 a-head. This petition was laid on the table, and rests there yet." *Brooks's Medford*, 435. The act of 1739 was for ten years, and therefore expired in 1749. We have found no repeal of the old law, but the proceedings concerning the act proposed in 1767 would seem to show all the old acts of Impost to be expired or obsolete.

Militia, an act passed in 1707, Chapter 2, required them to do service on the highways and in cleaning the streets, etc., as an equivalent. Thirty-three free negroes were mentioned in the minutes of the Selectmen of Boston, in 1708, to whom, according to this law, two hundred and eighteen days of labor were assigned upon the highways and other public works. *Lyman's Report*, 1822. The same act prohibited them to entertain any servants of their own color in their houses, without permission of the respective masters or mistresses.

In 1712, an act was passed prohibiting the importation or bringing into the Province any Indian servants or slaves. The preamble recites the bad character of the Indians and other slaves, "being of a malicious, surly and revengeful spirit; rude and insolent in their behaviour, and very ungovernable." A glimpse of possible future reform is to be caught in this act, for it recognizes the increase of slaves as a "discouragement to the importation of White Christian Servants." But its chief motive was in the peculiar circumstances of the Province "under the sorrowful effects of the Rebellion and Hostilities" of the Indians, and the fact that great numbers of Indian slaves were already held in bondage in the Province at the time.

This act had a special reference to Southern Indians, the Tuscaroras and others, captives in war, chiefly from South Carolina. Governor Dudley afterwards entered into correspondence with other colonial governors, about preventing the sale of Indians from that Province to the Northern colonies. Similar acts were passed by Pennsylvania in 1712,

New Hampshire in 1714, and Connecticut and Rhode Island in 1715.

Under the earliest laws of taxation in Massachusetts, slaves must have been rated (if taxed at all) as polls, the owners paying for them as for other servants and children, "such as take not wages." This continued until the period of the Province Charter, when, in the year 1692, "every male slave of sixteen years old and upwards" was rated "at Twenty Pounds Estate." In 1694, "all Negro's, Molattoes and Indian Servants, as well male as female, of 16 years old and upwards, at the rate of 12*d.* per poll same as other polls." In 1695, "all Negro's, Molatto, and Indian Servants, males of 14 years of age and upward at the rate of 20*l.* estate, and Females at 14*l.* estate, unless disabled by infirmity." They were subsequently in the same year rated "as other personal estate," which mode was continued in 1696, 1697, and 1698, in the latter year "according to the sound judgment and discretion of the Assessors, *not excluding faculties.*"

This rating for "faculties" was a prominent feature in the early tax-laws of Massachusetts, and was continued after the commencement of the present century.¹

It was applied to white men in Massachusetts from the beginning, being intended as a just valuation for those who had arts, trades, and faculties, by the produce of which they were "more enabled to bear the publick charge than common laborers and Workmen,

¹ Mr. Felt says, in his memoranda, under the date of 1829, "the rating for faculties, long a prominent item in our former tax-acts, and not unfrequently made a subject of pleasant remark, has been dropped, like other notions of ancient custom." *Coll. Amer. Stat. Assoc.*, 1., 502. See also pp. 297, 374.

as Butchers, Bakers, Brewers, Victuallers, Smiths, Carpenters, Taylors, Shoemakers, Joyners, Barbers, Millers and Masons, with all other manual persons and Artists." *Mafs. Laws, Ed. 1672, p. 24.* The law of 1698, however, appears to have been the first, if not the only one, in which this feature was applied to the "Negroes, Molattoes and Indians" in bondage; and may be justly regarded as an indication of progress, for it was an admission that these unfortunate creatures had "faculties," valuable to their owners, if not to themselves.¹

There was little variation in these laws during the entire colonial period—all Indian, Negro, and Mulatto servants continuing to be rated as personal property—excepting that occasionally some of those who were servants for a term of years, but not for life, were numbered and rated as polls.

In 1716, an attempt was made to modify this feature of the legislation of Massachusetts. The following extract from Judge Sewall's Diary is copied from the original. Though quoted by Coffin, in his *History of Newbury*, 188, and Felt, in the *Coll. Amer.*

¹ The early records of the town of Boston preserve the fact that one Thomas Deane, in the year 1661, was prohibited from employing a negro in the manufacture of hoops under a penalty of twenty shillings, for what reason is not stated. *Lyman's Report*, 1822. Phillis Wheatley's was not the only instance, in Boston, of the negro's capacity for intellectual improvement. A worthy Englishman, Richard Dalton, Esq., a great admirer of the Greek classics, because of the tenderness of his eyes, taught his negro boy, Cæsar, to read to him distinctly any Greek writer, without understanding the meaning or interpretation. *Douglass*, ii., 345. In the *Boston Chronicle* for September 21, 1769, is advertised:—"To be sold, a Likely Little negro boy, who *can speak the French language*, and very fit for a Valet."

Stat. Association, I., 586, it is not correctly printed by either.

“1716. I-effayed June 22, to prevent Indians and Negroes being rated with Horfes and Hogs ; but could not prevail. Col. Thaxter bro’t it back” [from the Deputies], “and gave as a reason of y^r” [their] “Nonagreement, They were juft going to make a New Valuation.”

This concise mention of Judge Sewall’s benevolent “effay,” indicates that he had firft propofed the matter in the Council, of which he was then a member ; and that the Council agreeing, their decifion was fent down to the Houfe for their concurrence. But the Houfe non-concurred ; and fignified by Colonel Thaxter, that they declined their affent to the refolve of the Council, for the reason that “they were juft going to make a New Valuation ;” and as in the preceding valuations of the property of their conftituents, Indian, Negro, and Mulatto flaves had been prominent articles, they muft keep on ftill in the old track ; Indians, Negroes, and Mulattoes muft ftill be valued as property, and for this fpecies of property their owners muft ftill be taxed. *MS. Letter of Rev. Samuel Sewall.*

In 1718, all Indian, Negro, and Mulatto fervants for life were eftimated as other Perfonal Eftate—viz : Each male fervant *for life* above fourteen years of age, at fifteen pounds value ; each female fervant for life, above fourteen years of age, at ten pounds value. The affeffor might make abatement for caufe of age or infirmity. Indian, Negro, and Mulatto Male fervants *for a term of years* were to be numbered and

rated as other Polls, and not as Personal Estate.¹ In 1726, the assessors were required to estimate Indian, Negro, and Mulatto servants proportionably as other Personal Estate, according to their sound judgment and discretion. In 1727, the rule of 1718 was restored, but during one year only, for in 1728 the law was the same as that of 1726; and so it probably remained, including all such servants, as well for term of years as for life, in the rateable estates. We have seen the supply bills for 1736, 1738, 1739, and 1740, in which this feature is the same.

And thus they continued to be rated with horses, oxen, cows, goats, sheep, and swine, until after the commencement of the War of the Revolution. We have not seen the law, but Mr. Felt states that "in 1776 the colored polls were taxed the same as the white polls, and so continued to be." *Coll. Amer. Stat. Assoc.*, I., 475. See also pp. 203, 311, 345, 411.

In the inventory of Captain Paul White, in 1679, was "one negrow = 30*l*." In 1708, an Indian boy from South Carolina brought 35*l*. An Indian girl brought fifteen pounds, at Salem, in August, 1710. The highest price paid for any of a cargo brought into Boston, by the sloop Katherine, in 1727, was eighty pounds. The estate of Samuel Morgaridge, who died in 1754, included the following: "Item, three negroes 133*l*. 6*s*. 8*d*." *Coffin's Newbury*, 188, 336. *Coll. Essex Institute*, I., 14. *Felt's Salem*, II., 416.

"The Guinea Trade," as it was called then, since known and branded by all civilized nations as piracy,

¹ Another act of the year 1718 forbade, under heavy penalties, Masters of Ships to carry off "any bought or hired servant or apprentice."

whose beginnings we have noticed, continued to flourish under the auspices of Massachusetts merchants down through the entire colonial period, and long after the boasted Declaration of Rights in 1780 had terminated (?) the legal existence of slavery within the limits of that State. *Felt's Salem*, 11., 230, 261, 265, 288, 292, 296. To gratify those who are curious to see what the instructions given by respectable merchants in Massachusetts to their slave captains were in the year 1785, we copy them from *Felt's Salem*, 11., 289-90; probably the only specimen extant.¹

“———, Nov. 12, 1785.

“Capt ——.

“Our brig,² of which you have the command, being cleared at the office, and being in every other respect complete for sea; our orders are, that you embrace the first fair wind and make the best of your way to the coast of Africa, and there invest your cargo in slaves. As slaves, like other articles, when brought to market, generally appear to the best advantage; therefore, too critical an inspection cannot be paid to them before purchase; to see that no dangerous distemper is lurking about them, to attend particularly to their age, to their countenance, to the straightness of their limbs, and, as far as possible to the goodness or badness of their constitution, &c. &c., will be very considerable objects.

“Male or female slaves, whether full grown or not, we cannot particularly instruct you about; and on this head shall only observe, that prime male slaves generally sell best in any market. No people require more kind and tender treatment to exhilarate their spirits, than the Africans; and, while on the one hand you are attentive to this, remember that on the other hand, too much circumspection cannot be observed by yourself and people, to prevent their taking the advantage

¹ *Brooks's Medford* preserves similar instructions in 1759, and a specimen of the slave captain's day-book on the coast of Africa, pp. 436-7.

² This vessel was probably the Brig Favorite. Compare *Felt's Salem*, 11., 287 and 291.

of such treatment by insurrection, &c. When you consider that on the health of your slaves, almost your whole voyage depends; for all other risks, but mortality, seizures and bad debts, the underwriters are accountable for;—you will therefore particularly attend to smoking your vessel, washing her with vinegar, to the clarifying your water with lime or brimstone, and to cleanliness among your own people, as well as among the slaves.

“As the factors on the coast have no laws but of their own making, and of course such as suit their own convenience, they therefore, like the Israelites of old, do whatsoever is right in their own eyes; in consequence of which you ought to be very careful about receiving gold dust, and of putting your cargo into any but the best hands, or if it can be avoided, and the same dispatch made, into any hands at all, on any credit. If you find that any saving can be made by bartering rum for slops, and supplying your people with small stores, you will do it; or even if you cannot do it without a loss, it is better done than left undone; for shifts of clothes, particularly in warm climates, are very necessary. As our interest will be considerable, and as we shall make insurance thereon, if any accident should prevent your following the track here pointed out, let it be your first object to protest publicly, why, and for what reason you were obliged to deviate. You are to have four slaves upon every hundred, and four at the place of sale; the privilege of eight hogsheads, and two pounds eight shillings per month;—these are all the compensations you are to expect for the voyage.

“Your first mate is to have four hogsheads privilege, and your second mate two, and wages as per agreement. No slaves are to be selected out as privileged ones, but must rise or fall with the general sales of the cargo, and average accordingly. We shall expect to hear from you, by every opportunity to Europe, the West Indies, or any of these United States; and let your letters particularly inform us, what you have done, what you are then doing, and what you expect to do. We could wish to have as particular information as can be obtained, respecting the trade in all its branches on the coast; to know if in any future time, it is probable a load of N. E. Rum could be sold for bills of exchange on London, or any part of Europe; or, for gold dust; and what dispatch in this case might be made.

“You will be careful to get this information from gentlemen of veracity, and know of them if any other articles would answer from

this quarter. We should be glad to enter into a contract, if the terms would answer, with any good factor for rum, &c. If any such would write us upon the subject, and enclose a memorandum with the prices annexed, such letters and memorandums shall be duly attended to. We are in want of about five hundred weight of camwood, and one large elephant's tooth of about 80 lbs., which you will obtain. If small teeth can be bought from 15 to 30 lbs., so as to sell here without a loss, at three shillings, you may purchase 200 lbs. Should you meet with any curiosities on the coast, of a small value, you may expend 40 or 50 gallons of rum for them. Upon your return you will touch at St. Pierre's, Martinico, and call on Mr. John Mounreau for your further advice and destination. We submit the conducting of the voyage to your good judgment and prudent management, not doubting of your best endeavours to serve our interest in all cases; and conclude with committing you to the almighty Disposer of all events.

* We wish you health and prosperity,

“ And are your friends and owners.”

The slaves purchased in Africa were chiefly sold in the West Indies, or in the Southern colonies; but when these markets were glutted, and the price low, some of them were brought to Massachusetts. The statistics of the trade are somewhat scattered, and it is difficult to bring them together, but enough is known to bring the subject home to us. In 1795, one informant of Dr. Belknap could remember two or three entire cargoes, and the Doctor himself remembered one somewhere between 1755 and 1765 which consisted almost wholly of children. Sometimes the vessels of the neighboring colony of Rhode Island, after having sold their prime slaves in the West Indies, brought the remnants of their cargoes to Boston for sale. *Coll. M. H. S.*, 1., iv., 197.

The records of the slave-trade and slavery everywhere are the same—the same disregard of human

rights, the same indifference to suffering, the same contempt for the oppressed races, the same hate for those who are injured. It has been asserted that in Massachusetts, not only were the miseries of slavery mitigated, but some of its worst features were wholly unknown. But the record does not bear out the suggestion; and the traditions of one town at least preserve the memory of the most brutal and barbarous¹ of all, "raising slaves for the market." *Barry's Hanover*, 175.

The first newspapers published in America illustrate among their advertisements the peculiar features of the institution to which we refer, and in their scanty columns of intelligence may be found thrilling accounts of the barbarous murders of masters and crews by the hands of their slave-cargoes.² The case of the *Amistad* negroes had its occasional parallel in the colonial history of the traffic—excepting that the men of New England had a sympathy at home in the 17th and 18th centuries, which was justly withheld from their Spanish and Portuguese imitators in the 19th. Nor was that region wholly exempt from the terror by day and by night of slave insurrections. In *Coffin's Newbury*, 153, is a notice of a conspiracy of Indian and negro slaves "to obtain their inalienable rights,"—apparently a scheme of some magnitude.

¹ "The slave-trade can be supported only by barbarians; for civilized nations purchase slaves, but do not produce them." *Gibbon, Extraits de son Journal*, Oct. 19, 1763. What would the historian of the Decline and Fall of the Roman Empire have said of the Virginia of the nineteenth century!

² *Boston News Letter*, No. 1399, *New England Weekly Journal*, No. 214, *Boston News Letter*, No. 1422, No. 1423.

As the advantages of advertising came to be understood, the descriptions of slave property became more frequent and explicit. Negro men, women, and children were mixed up in the sales with wearing apparel, Gold Watches, and other Goods¹—"very good Barbados Rum" is offered with "a young negro that has had the Small Pox"²—and competitors offer "Likely negro men and women just arrived"³—"negro men *new* and negro boys who have been in the country some time,"⁴ and also "just arrived, a choice parcel of negro boys and girls."⁵ "A likely negro man *born in the country*, and bred a Farmer, fit for any service,"⁶ "a negro woman about 22 years old, with a boy about 5 months,"⁷ &c., a "likely negro woman about 19 years and a child of about six months of age *to be sold together or apart*,"⁸ and "a likely negro man, *taken by execution*, and to be sold by publick auction at the Royal Exchange Tavern in King Street, at six o'clock this afternoon,"⁹ must conclude these extracts.

At this point it may be necessary to interpose a caution with reference to the judgment which must be pronounced against the policy which has been illustrated

¹ Boston News Letter, No. 1402.

² N. E. Journal, No. 200.

³ N. E. Journal, No. 217.

⁴ N. E. Journal, No. 230.

⁵ Boston News Letter, No. 1438, August 12th to 19th, 1731.

⁶ This man was offered for sale by the Widow and Administratrix to the Estate of Thomas Amory in 1731. Boston News Letter, No. 1413.

⁷ Boston News Letter, No. 1487, July 20th to July 27th, 1732.

⁸ N. E. Weekly Journal, No. 267, May 1st, 1732.

⁹ The Boston Gazette and Country Journal, No. 594, August 18, 1766.

This advertisement is a conclusive answer to the claim that "no evidence is found of such taking in execution in Massachusetts." *Dane's Abridgment*, II., 314.

in these notes ; and a recent writer of English history has so clearly stated our own views, that his language requires very little change here.

It would be to misread history and to forget the change of times, to see in the Fathers of New England mere commonplace slavemongers ; to themselves they appeared as the elect to whom God had given the heathen for an inheritance ; they were men of stern intellect and fanatical faith, who, believing themselves the favorites of Providence, imitated the example and assumed the privileges of the chosen people, and for their wildest and worst acts they could claim the sanction of religious conviction. In seizing and enslaving Indians, and trading for negroes, they were but entering into possession of the heritage of the saints ; and New England had to outgrow the theology of the Elizabethan Calvinists before it could understand that the Father of Heaven respected neither person nor color, and that his arbitrary favor—if more than a dream of divines—was confined to spiritual privileges. *Compare Froude's History of England, Vol. VIII., 480.*

It was not until the struggle on the part of the colonists themselves to throw off the fast-closing shackles of British oppression culminated in open resistance to the mother-country, that the inconsistency of maintaining slavery with one hand while pleading or striking for freedom with the other, compelled a reluctant and gradual change in public opinion on this subject.

If it be true that at no period of her colonial and provincial history was Massachusetts without her

“protestants” against the whole system; their example was powerless in that day and generation. The words and thoughts of a Williams, an Eliot, and a Sewall, fell unheeded and unnoticed on the ears and hearts of the magistrates and people of their time, as the acorn fell two centuries ago in the forests by which they were surrounded.¹

V.

BUT the humane efforts of Roger Williams and John Eliot to abate the severity of judgment against captives, and mitigate the horrors of slavery in Massachusetts, hardly amounted to a positive protest against the institution itself. In their time there was no public opinion against slavery, and probably very little exercise of private judgment against it. Even among the Quakers the inner light had not yet disclosed its enormity, or awakened tender consciences to its utter wickedness.)

There were two signal exceptions to the general

¹ In this sentence, as originally printed in the *Historical Magazine*, a “Dudley” was included among those indicated as having been in advance of their contemporaries on this subject. The reference was to Paul Dudley, who was the author of a tract, published in 1731, entitled, “An Essay on the Merchandize of Slaves and Souls of Men. With an Application to the Church of Rome.” This title, and references to the tract by others, gave us the impression that it was against Slavery; but an opportunity recently enjoyed of examining the tract itself, showed the mistake. It is altogether “an Application to the Church of Rome,”—in fact, “an oration against Popery,” of which Massachusetts had a much greater horror than of slavery.

theory and practice of that period on this subject, both of which deserve to be had in everlasting remembrance. We shall make no apology for noticing them in this place, although their connection with the history of slavery in Massachusetts is very remote.

Among the "Acts and Orders made at the Generall Court of Election held at Warwicke this 18th day of May, anno 1652," "The Commissioners of Providence and Warwicke being lawfully mett and sett," on the second day of their session (19th May, 1652), enacted and ordered as follows, viz. :

"WHEREAS, there is a common course practised among Englishmen to buy negers, to that end they may have them for service or slaves for ever ; for the preventinge of such practices among us, let it be ordered, that no blacke mankind or white being forced by covenant bond, or otherwise, to serve any man or his assignes longer than ten yeares, or untill they come to bee twentiefour yeares of age, if they bee taken in under fourteen, from the time of their cominge within the liberties of this Collonie. And at the end or terme of ten yeares to sett them free, as is the manner with the English servants. And that man that will not let them goe free, or shall sell them away elsewhere, to that end that they may be enslaved to others for a long time, hee or they shall forfeit to the Collonie forty pounds." *R. I. Records*, 1., 248.

This noble act stands out in solitary grandeur in the middle of the seventeenth century, the first legislative enactment in the history of this continent, if not of the world, for the suppression of involuntary servitude. But, unhappily, it was not enforced, even

in the towns over which the authority of the Commissioners extended.¹

The other exception to which we have referred is to be found in the following declaration against slavery by the Quakers of Germantown, Pennsylvania, in 1688. These were a "little handful" of German Friends from Cresheim, a town not far from Worms, in the Palatinate.

We are indebted to the curious and zealous research of Mr. Nathan Kite, of Philadelphia, for the publication of this interesting memorial. It appeared in *The Friend*, Vol. xvii., No. 16, January 13, 1844. The paper from which Mr. Kite copied was the original. At the foot of the address, John Hart, the clerk of the Monthly Meeting, made his minute, and that paper having been then forwarded to the Quarterly Meeting, received a few lines from Anthony Morris, the clerk of that body, to introduce it to the Yearly Meeting, to which it was then directed.

"This is to the monthly meeting held at Richard Worrell's:

"These are the reasons why we are against the traffic of men-body, as followeth: Is there any that would be done or handled at this manner? viz., to be sold or made a slave for all the time of his life? How fearful and faint-hearted are many at sea, when they see a strange vessel, being afraid it should be a Turk,

¹ Compare *Arnold*, I., 240. We omit his mistaken reference to Massachusetts in regard to the Act of 1646—so long misunderstood or misrepresented as a protest against slavery. See *ante*, pp. 28-30. Also *Bancroft*, I., 174, and *Hildreth*, I., 373.

and they should be taken, and sold for slaves into Turkey. Now, what is *this* better done, than Turks do? Yea, rather it is worse for them, which say they are Christians; for we hear that the most part of such negroes are brought hither against their will and consent, and that many of them are stolen. Now, though they are black, we cannot conceive there is more liberty to have them slaves, as [than] it is to have other white ones. There is a saying, that we should do to all men like as we will be done ourselves; making no difference of what generation, descent, or colour they are. And those who steal or rob men, and those who buy or purchase them, are they not all alike? Here is liberty of conscience, which is right and reasonable; here ought to be likewise liberty of the body, except of evil-doers, which is another case. But to bring men hither, or to rob and sell them against their will, we stand against. In Europe, there are many oppressed for conscience-sake; and here there are those oppressed which are of a black colour. And we who know that men must not commit adultery—some do commit adultery *in* others, separating wives from their husbands, and giving them to others: and some sell the children of these poor creatures to other men. Ah! do consider well this thing, you who do it, if you would be done at this manner—and if it is done according to Christianity! You surpass Holland and Germany in this thing. This makes an ill report in all those countries of Europe, where they hear of [it,] that the Quakers do here handel men as they handel there the cattle. And for that reason some have no mind or inclination to come hither.

And who shall maintain this your cause, or plead for it? Truly, we cannot do so, except you shall inform us better hereof, viz.: that Christians have liberty to practise these things. Pray, what thing in the world can be done worse towards us, than if men should rob or steal us away, and sell us for slaves to strange countries; separating husbands from their wives and children. Being now this is not done in the manner we would be done at, [by]; therefore, we contradict, and are against this traffic of men-body. And we who profess that it is not lawful to steal, must, likewise, avoid to purchase such things as are stolen, but rather help to stop this robbing and stealing, if possible. And such men ought to be delivered out of the hands of the robbers, and set free as in Europe. Then is Pennsylvania to have a good report, instead, it hath now a bad one, for this sake, in other countries: Especially whereas the Europeans are desirous to know in what manner *the Quakers* do rule in *their* province; and most of them do look upon us with an envious eye. But if this is done well, what shall we say is done evil?

“ If once these slaves (which they say are so wicked and stubborn men,) should join themselves—fight for their freedom, and handel their masters and mistresses, as they did handel them before; will these masters and mistresses take the sword at hand and war against these poor slaves, like, as we are able to believe, some will not refuse to do? Or, have these poor negers not as much right to fight for their freedom, as you have to keep them slaves?

“ Now consider well this thing, if it is good or

bad. And in case you find it to be good to handel these blacks in that manner, we desire and require you hereby lovingly, that you may inform us herein, which at this time never was done, viz., that Christians have such a liberty to do so. To the end we shall be satisfied on this point, and satisfy likewise our good friends and acquaintances in our native country, to whom it is a terror, or fearful thing, that men should be handelled so in Pennsylvania.

“This is from our meeting at Germantown, held y^e 18th of the 2d month, 1688, to be delivered to the monthly meeting at Richard Worrell’s.

“GARRET HENDERICH,
DERICK OP DE GRAEFF,
FRANCIS DANIEL PASTORIUS,
ABRAM OP DE GRAEFF.

“At our monthly meeting, at Dublin, y^e 30th 2d mo., 1688, we having inspected y^e matter, above mentioned, and considered of it, we find it so weighty that we think it not expedient for us to meddle with it *here*, but do rather commit it to y^e consideration of y^e quarterly meeting; y^e tenor of it being related to y^e truth.

“On behalf of y^e monthly meeting,

“JO. HART.

“This abovementioned, was read in our quarterly meeting, at Philadelphia, the 4th of y^e 4th mo., ’88, and was from thence recommended to the yearly meeting, and the above said Derrick, and the other two mentioned therein, to present the same to y^e above

said meeting, it being a thing of too great weight for this meeting to determine.

“Signed by order of y^e meeting.

“ANTHONY MORRIS.”

The minutes of the Yearly Meeting, held at Burlington in the same year, record the result of this first effort among the Quakers.

“At a Yearly Meeting, held at Burlington the 5th day of the 7th Month, 1688.

“A paper being here presented by some German Friends Concerning the Lawfulness & Unlawfulness of Buying & Keeping of Negroes It was adjudged not to be so proper for this Meeting to give a Positive Judgment in the Case It having so general a Relation to many other Parts & therefore at present they Forbear It.” *Extract from the Original Minutes, copied by Nathan Kite. Compare Bettie, in Penn. Hist. Soc. Coll., I., 365.*

Richard Baxter has been represented as having “echoed the opinions of Puritan Massachusetts.” *Bancroft, III., 412.* We have already shown that the Puritans of Massachusetts were not hostile to slavery. Neither was Baxter; for he expressly recognized the lawfulness of the purchase and use of men as slaves, although he denounced man-stealing as piracy. The principal point of his *Christian Directory* (published in 1673) in this matter, was concerning the religious obligations growing out of the relation of master and slave. *Works, IV., 212-20., XVII., 330., XIX., 210.*

Morgan Godwyn, a clergyman of the Church of England, who wrote and published in 1680 "The Negro's and Indian's Advocate, suing for their Admission into the Church," etc., hardly intimates a doubt of the lawfulness of their slavery, while he pleads for their humanity and right to religion against a very general opinion of that day, which denied them both.

Dean Berkeley, in his famous sermon before the Venerable Society in 1731, speaks of "the irrational contempt of the Blacks, as Creatures of another Species, who had no right to be instructed or admitted to the Sacraments." *Sermon*, p. 19.

And George Keith (then Quaker), whose paper against the practice was said to be given forth by the appointment of the meeting held by him in the city of Philadelphia, about the year 1693, gave a strict charge to Friends "that they should set their negroes at liberty, *after some reasonable time of service.*" *Gabriel Thomas's History of Pennsylvania, etc.*, 1698, pp. 53, 54. This was probably the pamphlet quoted by Dr. Franklin in his letter to John Wright, 4th November, 1789. *Works*, x., 403.

Keith appears simply to have repeated the words of George Fox in Barbadoes in 1671, when he urged the religious training of the negroes, as well as kind treatment, in place of "cruelty towards them, as the manner of some hath been and is; and that after certain years of servitude they should make them free." *Journal*, II., 140. For a more particular account of this testimony of Fox, see *The Friend*, Vol. xvii., pp. 28, 29. 4to. Phil. 1843. The explicit

answer of Fox to the charge that the Quakers "taught the negroes to rebel," shows very clearly that anti-slavery doctrines were no part of the Quaker creed at that time. *Ibid.*, pp. 147-9. Compare 454. See also *Ralph Sandiford's Brief Examination, etc., Preface.*

And for half a century afterwards "that people were as greedy as any Body in keeping Negroes for their Gain," so as to induce the belief that they "approved of it as a People with one consent unanimously." *Lay*, 84. Ralph Sandiford, in 1729, in his "Brief Examination," etc., thus bemoaned the fact, "that it hath defaced the present Dispensation."

"Had the Friends stood clear of this Practice, that it might have been answered to the Traders in Slaves that there is a People called *Quakers* in *Pennsylvania* that will not own this practice in Word or Deed, then would they have been a burning and a shining Light to these poor Heathen, and a Precedent to the Nations throughout the Universe which might have brought them to have seen the Evil of it in themselves, and glorified the Lord on our Behalf, and like the Queen of the *East*, to have admired the Glory and Beauty of the Church of God. But instead thereof, the tender seed in the Honest-hearted is under Suffering, to see both Elders and Ministers as it were cloathed with it, and their offspring after them filling up the Measure of their Parents' Iniquity; which may be suffered till such Time that Recompence from Him that is just to all his Creatures opens that Eye the god of this World has blinded. Though I would not be understood to pervert the Order of the Body, which consists of Servants and Masters, and the

Head cannot say to the Foot, *I have no need of thee*; but it is the Converting Men's Liberty to our Wills, who have not, like the Gibeonites, offered themselves willingly, or by Consent given their Ear to the Doorpost, but are made such by Force, in that Nature that desires to Lord it over their Fellow Creatures, is what is to be abhorred by all Christians." pp. 9, 10.

Again, he says in another place: "But in Time this dark Trade creeping in amongst us to the very Ministry, because of the profit by it, hath spread over others like a Leprosy, to the Grief of the Honest-hearted." *Preface.*

Public sentiment and opinion against slavery were first aroused and stimulated in America in the latter part of the seventeenth century by sympathy for the Christian captives, Dutch and English, who were enslaved by the Turks and the pirates of Northern Africa. *Lay's "All Slave-keepers Apostates."* The efforts to ransom and release these unfortunate persons, excited by the terrible sorrow of relatives and friends, kinsmen and countrymen, brought home to some minds (though few) the injustice of their own dealings with the negroes. The earliest writers against slavery urged that argument with peculiar force and unction, but with little effect. They seem to have made no impression on the legislation of the colonies, and curious and zealous research only can recover the memorials of their righteous testimonies.

The earliest positive public challenge to slavery in Massachusetts of which we have any knowledge, was in the year 1700, when a learned, pious, and honored magistrate entered the lists alone, and founded his

solitary blast in the ears of his brother magistrates and the people, who listened in amazement and wonder, not unmingled with sorrow and contempt. His performance is all the more remarkable from the fact that it stands out in the history of the time separate and distinct as "the voice of one crying in the wilderness."

SAMUEL SEWALL, at that time a Judge of the Superior Court, and afterwards Chief-Justice, published a brief tract in 1700, entitled: "*The Selling of Joseph a Memorial.*" It filled three pages of a folio sheet, ending with the imprint: "*Boston of the Massachusetts; Printed by Bartholomew Green and John Allen. June 24th, 1700.*"

The author presented a copy of this tract "not only to each member of the General Court at the time of its publication, but also to numerous clergymen and literary gentlemen with whom he was intimate." *MS. Letter. Compare Briffot, i., 224.* Although thus extensively circulated at that day, it has for many years been known apparently only by tradition, as nearly all the notices of it which we have seen are confined to the fact of its publication early in the eighteenth century, the date being nowhere correctly stated.

Beyond this, it appears to have been unknown to our historians, and is now reproduced probably for the first time in the present century. Indeed, we have met with no quotation even from it later than 1738, when it was reprinted in Pennsylvania, where anti-slavery took an earlier and deeper root, and bore earlier fruit, than in any other part of America.¹

¹ It was reprinted as a part of Benjamin Lay's tract, "*All Slave-Keepers that keep the Innocent in Bondage, Apostates* . . .," in which it occupies

Its rarity and peculiar interest will justify us in placing the reprint before our readers in this connection. It is somewhat remarkable that so signal a testimony against slavery should have escaped the research of those who have in their custody "the historic fame" of Massachusetts. It is a most honorable memorial of its venerated author.

"THE SELLING OF JOSEPH A MEMORIAL.

By the Hon'ble JUDGE SEWALL in New England.

"FORASMUCH as LIBERTY is in real value next unto Life; None ought to part with it themselves, or deprive others of it, but upon most mature consideration.

"The Numerousness of Slaves at this Day in the Province, and the Uneasiness of them under their Slavery, hath put many upon thinking whether the Foundation of it be firmly and well laid; so as to sustain the Vast Weight that is built upon it. It is most certain that all Men, as they are the Sons of Adam, are Co-heirs, and have equal Right unto Liberty, and all other outward Comforts of Life. GOD hath given the Earth [with all its commodities] unto the Sons of Adam, *Psal.*, 115, 16. And hath made of one Blood all Nations of Men, for to dwell on all the face of the Earth, and hath determined the Times before appointed, and the bounds of their Habitation: That they should seek the Lord. Forasmuch then as we are the Offspring of GOD, &c. *Acts* 17. 26, 27, 29. Now, although the Title given by the last ADAM doth infinitely better Men's Estates, respecting GOD and themselves; and grants them a most beneficial and inviolable Lease under the Broad Seal of Heaven, who were before only Tenants at Will; yet through the Indulgence of GOD to our First Parents after the Fall, the outward Estate of all and every of their Children, remains the

pp. 199-207 inclusive. The title of Lay's tract gives the imprint, "*Philadelphia, Printed for the Author, 1737*;" but it was not published until the following year. See *The American Weekly Mercury*, No. 973, Aug. 17-24, 1738, and following numbers; especially No. 982, Oct. 19-26, 1738, in which is printed the repudiation of Lay and his book, by the Yearly Meeting.

fame as to one another. So that Originally, and Naturally, there is no such thing as Slavery. *Joseph* was rightfully no more a Slave to his Brethren, than they were to him; and they had no more Authority to Sell him, than they had to Slay him. And if they had nothing to do to sell him; the *Ishmaelites* bargaining with them, and paying down Twenty pieces of Silver, could not make a Title. Neither could *Potiphar* have any better Interest in him than the *Ishmaelites* had. *Gen. 37, 20, 27, 28.* For he that shall in this case plead *Alteration of Property*, seems to have forfeited a great part of his own claim to Humanity. There is no proportion between Twenty Pieces of Silver and LIBERTY. The Commodity itself is the Claimer. If *Arabian Gold* be imported in any quantities, most are afraid to meddle with it, though they might have it at easy rates; lest it should have been wrongfully taken from the Owners, it should kindle a fire to the Consumption of their whole Estate. 'Tis pity there should be more Caution used in buying a Horse, or a little lifeless dust, than there is in purchasing Men and Women: Whereas they are the Offspring of God, and their Liberty is,

. . . *Auro pretiosior Omni.*

“ And seeing God hath said, *He that Stealeth a Man, and Selleth him, or if he be found in his Hand, he shall surely be put to Death.* *Exod. 21, 16.* This Law being of Everlasting Equity, wherein Man-Stealing is ranked among the most atrocious of Capital Crimes: What louder Cry can there be made of that Celebrated Warning.

Caveat Emptor!

“ And all things considered, it would conduce more to the Welfare of the Province, to have White Servants for a Term of Years, than to have Slaves for Life. Few can endure to hear of a Negro's being made free; and indeed they can seldom use their Freedom well; yet their continual aspiring after their forbidden Liberty, renders them Unwilling Servants. And there is such a disparity in their Conditions, Colour, and Hair, that they can never embody with us, & grow up in orderly Families, to the Peopling of the Land; but still remain in our Body Politick as a kind of extravasat Blood. As many Negro Men as there are among us, so many empty Places are there in our Train Bands, and the places taken up of Men that might make Husbands for our Daughters. And the Sons and Daughters of *New England* would

become more like *Jacob* and *Rachel*, if this Slavery were thrust quite out of Doors. Moreover it is too well known what Temptations Masters are under, to connive at the Fornication of their Slaves; lest they should be obliged to find them Wives, or pay their Fines. It seems to be practically pleaded that they might be lawless; 'tis thought much of, that the Law should have satisfaction for their Thefts, and other Immoralities; by which means, *Holiness to the Lord* is more rarely engraven upon this sort of Servitude. It is likewise most lamentable to think, how in taking Negroes out of *Africa*, and selling of them here, That which God has joined together, Men do boldly rend asunder; Men from their Country, Husbands from their Wives, Parents from their Children. How horrible is the Uncleaness, Mortality, if not Murder, that the Ships are guilty of that bring great Crouds of these miserable Men and Women. Methinks when we are bemoaning the barbarous Usage of our Friends and Kinsfolk in *Africa*, it might not be unreasonable to enquire whether we are not culpable in forcing the *Africans* to become Slaves amongst ourselves. And it may be a question whether all the Benefit received by *Negro* Slaves will balance the Account of Cash laid out upon them; and for the Redemption of our own enslaved Friends out of *Africa*. Besides all the Persons and Estates that have perished there.

“ Obj. 1. *These Blackamores are of the Posterity of Cham; and therefore are under the Curse of Slavery.* Gen. 9, 25, 26, 27.

“ *Anf.* Of all Offices, one would not beg this; viz. Uncall'd for, to be an Executioner of the Vindictive Wrath of God; the extent and duration of which is to us uncertain. If this ever was a Commission; How do we know but that it is long since out of Date? Many have found it to their Cost, that a Prophetical Denunciation of Judgment against a Person or People, would not warrant them to inflict that evil. If it would, *Hazael* might justify himself in all he did against his master, and the *Israelites* from 2 *Kings* 8, 10, 12.

“ But it is possible that by cursory reading, this Text may have been mistaken. For *Canaan* is the Person Cursed three times over, without the mentioning of *Cham*. Good Expositors suppose the Curse entailed on him, and that this Prophecie was accomplished in the Ex-
tirpation of the *Canaanites*, and in the Servitude of the *Gibeonites*.

Vide Pareum. Whereas the Blackmores are not descended of *Canaan*, but of *Cush*. Pſal. 68, 31. *Princes ſhall come out of Egypt* [Mizraim]. *Ethiopia* [Cush] *ſhall ſoon ſtretch out her hands unto God.* Under which Names, all *Africa* may be comprehended; and their Promiſed Converſion ought to be prayed for. *Jer.* 13, 23. *Can the Ethiopian change his Skin?* This ſhows that Black Men are the Poſterity of *Cush*. Who time out of mind have been diſtinguiſhed by their Colour. And for want of the true, *Ovid* affigns a fabulous cauſe of it.

*Sanguine tum credunt in corpora ſumma vocato
Æthiopum populos nigrum traxiſſe colorem.*

Metamorph. lib. 2.

“Obj. 2. *The Nigers are brought out of a Pagan Country, into places where the Goſpel is preached.*

✓ “*Anſ.* Evil muſt not be done, that good may come of it. The extraordinary and comprehensive Benefit accruing to the Church of God, and to *Joſeph* perſonally, did not rectify his Brethren’s Sale of him.

“Obj. 3. *The Africans have Wars one with another: Our Ships bring lawful Captives taken in thoſe wars.*

✓ “*Anſw.* For aught is known, their Wars are much ſuch as were between *Jacob’s* Sons and their Brother *Joſeph*. If they be between Town and Town; Provincial or National: Every War is upon one ſide Unjuſt. An Unlawful War can’t make lawful Captives. And by receiving, we are in danger to promote, and partake in their Barbarous Cruelties. I am ſure, if ſome Gentlemen ſhould go down to the *Brewſters* to take the Air, and Fiſh: And a ſtronger Party from *Hull* ſhould ſurprize them, and ſell them for Slaves to a Ship outward bound; they would think themſelves unjuſtly dealt with; both by Sellers and Buyers. And yet ’tis to be feared, we have no other Kind of Title to our *Nigers*. *Therefore all things whatſoever ye would that men ſhould do to you, do you even ſo to them: for this is the Law and the Prophets.* Matt. 7, 12.

“Obj. 4. *Abraham had Servants bought with his Money and born in his Houſe.*

“*Anf.* Until the Circumstances of *Abraham's* purchase be recorded, no Argument can be drawn from it. In the mean time, Charity obliges us to conclude, that He knew it was lawful and good.

“It is Observable that the *Israelites* were strictly forbidden the buying or selling one another for Slaves. *Levit.* 25. 39. 46. *Fer.* 34. 8–22. And God gaged His Blessing in lieu of any loss they might conceit they suffered thereby, *Deut.* 15. 18. And since the partition Wall is broken down, inordinate Self-love should likewise be demolished. God expects that Christians should be of a more Ingenuous and benign frame of Spirit. Christians should carry it to all the World, as the *Israelites* were to carry it one towards another. And for Men obstinately to persist in holding their Neighbours and Brethren under the Rigor of perpetual Bondage, seems to be no proper way of gaining Assurance that God has given them Spiritual Freedom. Our Blessed Saviour has altered the Measures of the ancient Love Song, and set it to a most Excellent New Tune, which all ought to be ambitious of Learning. *Matt.* 5. 43. 44. *John* 13. 34. These *Ethiopians*, as black as they are, seeing they are the Sons and Daughters of the First *Adam*, the Brethren and Sisters of the Last *ADAM*, and the Offspring of *God*; They ought to be treated with a Respect agreeable.

“*Servitus perfecta voluntaria, inter Christianum & Christianum, ex parte servi patientis saepe est licita, quia est necessaria; sed ex parte domini agentis, & procurando & exercendo, vix potest esse licita; quia non convenit regula illi generali: Quaecunque volueritis ut faciant vobis homines, ita & vos facite eis. Matt.* 7. 12.

“*Perfecta servitus panæ, non potest jure locum habere, nisi ex delicto gravi quod ultimum supplicium aliquo modo meretur: quia Libertas ex naturali æstimatione proxime accedit ad vitam ipsam, & eidem a multis præferri solet.*

“*Ames. Cas. Conf. Lib. 5. Cap. 23. Thes. 2. 3.*”

Thus signally and clearly did Judge Sewall expose the miserable pretences on which slavery and the slave-trade were then justified in Massachusetts, as they continued to be long years after he “slept with his fathers.” And he exhibited in his correspondence his desire that “the wicked practice of slavery” might be

taken away, as well as his strong conviction that there would be "no great progress in Gospellizing till then." *Letter to Henry Newman, Dec.—Jan., 1714—15.* It is manifest that he was far in advance of his day and generation in these views, and he has himself left the record that he met more "frowns and hard words" than sympathy! His testimony did not go unchallenged, nor was its publication allowed to pass without reply. JOHN SAFFIN, a judge of the same court with Judge Sewall, and a slaveholder, printed an answer the next year, of which we regret to say we have been able to find no copy. Could it be found, it would undoubtedly be an interesting document and very important in illustration of the history of slavery in Massachusetts. We might naturally expect to find in it some references to the laws, the principles, and the practices of the Puritan Fathers of that colony.¹

¹ Since this portion of our work was first printed, in the Historical Magazine for June, 1864, Sewall's tract has been reprinted by the Massachusetts Historical Society, from an original presented to its Library by the Hon. Robert C. Winthrop. *Proc. M. H. S., 1863-64, pp. 161-5.* And, what is of much more importance in this connection, a copy of Saffin's answer has been discovered. It is a small quarto, entitled "A | Brief and Candid Answer to a late | Printed Sheet entitled | THE SELLING OF JOSEPH | whereunto is annexed, | a True and Particular Narrative by way of Vindication of the | Author's Dealing with and Prosecution of his Negro Man Servant | for his vile and exorbitant Behaviour towards his Master and his | Tenant, Thomas Shepard; which hath been wrongfully represented | to their Prejudice and Defamation. | By JOHN SAFFIN, Esq. : | Boston: Printed in the Year 1701." The original is now in the possession of GEORGE BRINLEY, Esq., of Hartford, Conn. We are indebted to the research and sagacity of Mr. J. HAMMOND TRUMBULL, President of the Connecticut Historical Society, for the discovery of Saffin's tract and permission to make the present use of it. Saffin's original petitions to the General Court in regard to this affair, one referring to his pamphlet as in print, etc., etc., are preserved in the *Masf. Archives, IX., 152, 153.*

The following letter from Judge Sewall, which illustrates the subject further, was addressed

“ To the Rev^d. & aged Mr. John Higginson.

Apr. 13, 1706.

“ Sir,

“ I account it a great Favour of God, that I have been priviledged with the Acquaintance and Friendship of many of the First Planters in New England : and the Friendship of your self, as such, has particularly oblig'd me. *It is now near Six years agoe since I printed a Sheet in defence of Liberty. The next year after, Mr. Saffin set forth a printed Answer. I forbore troubling the Province with any Reply, untill I saw a very Severe Act passing against Indians and Negros, and then I Reprinted that Question, as I found it stated and answered in the Athenian Oracle ; which I knew nothing of before last Autumn was twelve moneths, when I accidentally cast my Eye upon it. Amidst the Frowns and hard Words I have met with for this Undertaking, it is no small refreshment to me, that I have the Learned, Reverend & Aged Mr. Higginson for my Abetter. By the interposition of this Brest-Work, I hope to carry on and manage this Enterprize with Safety and Success.* I have inclosed the Prints. I could be glad of your Answer to one Case much in agitation among us at this day : viz., Whether it be not for the Honor of G. and of N. E. to reserve entire and untouch'd the Indian Plantation of Natick, and other Lands under the same Circumstances ? that the lying of those Lands unoccupied and undesired by the English, may be a valid and Lasting Evidence, that we desire the Con-

version and Welfare of the Natives, and would by no means Extirpat them, as the Spaniards did? There is one thing more I would mention, and that is, I am verily perswaded that the Set time for the Drying up of the Apocalyptical Euphrates, is very nigh, if not come: and I earnestly bespeak the Assistance of your Prayers in that momentous Concern: w^{ch} I do with the more Confidence, because you were Lifted in that Service above fifty years ago. Pray, Sir! Come afresh into the Confederation. Let me also entreat your Prayers for me, and my family, that the Blessing of G. may rest upon the head of every one in it by reason of the good will of Him who dwell'd in the Bush. My service to Madam Higginson. I am, Sir,

“Your humble Servt.

“S. S.”

We are unable to give any account of the Act against Indians and Negroes, whose severity induced Sewall to renew his efforts in their behalf. These efforts were probably successful, as none appears to have been passed into a law at all answering to his description in its provisions, and in point of time; or if passed, it must have been speedily repealed. If the Act referred to should be found, it might furnish a striking illustration of the views of the time concerning the status of these unhappy races of men.

We shall therefore re-produce here “that Question” as “stated and answered in the Athenian Oracle,” which Sewall used to so good purpose in defending the rights of Indians and Negroes against the hostile legislation of Massachusetts, in the early years of the eighteenth century.

From the Athenian Oracle, Vol. II., pp. 460-63.

“Q. We read in Gen. 17. 12: And he that is eight days old shall be Circumcised among you, every Man-child in their Generation. He that is born in the House, or bought with Money of any Stranger that is not of thy Seed. *This was God's Covenant with Abraham, and in him with all the Jews; which Covenant by Christ's coming into the World, being abolished, and the Covenant of Baptism instituted in its stead; The Question is, Whether those Merchants and Planters in the West Indies, as well all other parts of the World, that buy Negroes, or other Heathen Servants or Slaves, are not indispensably bound to bring such Servants to be Baptized, as well as Abraham was to Circumcise his Stranger Servants? Consequently, what's to be thought of those Christian Masters, who refuse to let such Servants be baptized; because if they were, they wou'd have their freedom at a certain term of Years allow'd by the Laws of the several Plantations?*

“A. We have met with this Question before, though to comply with the Gentleman's desire, we'll here give it a larger Answer; tho' in the first Place, we must observe a false supposition in the wording of it. That God's Covenant with *Abraham* was abolished by the Covenant he made with us by our Saviour, and consequently they are two *different Covenants*; whereas they were rather the *same Covenant*, with two different *Seals*; we say the Covenant God made with *Abraham*, was not a *Covenant of Works*, but of *Faith*, as well as that he makes by Christ with all Believers; nay, was the very same with it, Christ being promised in God's Covenant with *Abraham*, when 'twas said, *That in his seed should all the Nations of the Earth be blessed*; which is interpreted of Christ by the inspired Writers; and this is further evident from the Apostles way of Arguing, *Rom. 4. 11. 13. He received the Sign of Circumcision, a Seal of the Righteousness of the Faith, which he had yet being uncircumcised, that he might be Father of all them that believe, though they be not Circumcised; for the Promise that he should be the Heir of the World, was not to Abraham, or to his seed through the Law; but through Faith, etc.*

“Now to the Question. If *Abraham* was oblig'd to Circumcise all that were born of his House, and that were bought with money of

the *Stranger* (the Samaritan Version has it בַּרְבָּרָה *Barbarah*, whence Βάρβαρος a Barbarian, names that all Nations have ever since flung at one another, and the *Hebrews* as often call'd by it among the Greeks as any. If he was to do this, ought not all Christians by *Parity* of Reason to do the like by their *Slaves* and *Servants*? We answer, Yes, and much more, as the *Gospel* is now more clearly revealed than 'twas to *Abraham*, who indeed saw Christ, and rejoic'd, but 'twas in darker *Types* and *Prophecies*. But in order to a more full satisfaction of this Difficulty, it may be further convenient to enquire; whether Negro's Children are to be *Baptized*, and for grown Persons what Preparation is required of 'em? To the first, a great Man of our Church was of an opinion, That a Negro's Child ought to be baptiz'd, as well as any others; the Promise reaching *To all that were afar off, as well as to Believers and their Children*, and in this case, the right of the child is in the Master,[1] not the Slave; and if Christ dy'd for all, why should not the Vertues of his Death be apply'd to all; who do nothing to resist it, for the washing away their Original Pravity? Again, as we argue in the case of Infant Baptism. If Infants were in the Covenant before Christ, how come they since to be excluded? So we may here, and perhaps more generally; If all Infants, born in *Abraham's* house, or bought with Money of the Stranger or *Barbarian* (who often sold their own Children then, as they do now) if they were then to have the Seal of the Covenant, how have they since forfeited it? Why mayn't they be capable of a nobler Seal, 'tis true, but yet of the same Covenant made with all Mankind by Christ, that *promis'd Seed*, in whom, as before, all Nations should be blessed, and the breach repaired that was made in *Adam*; as was, we are sure, the expres opinion of St. *Ferom*, who in his disputation with the *Pelagian*, *Ep. 17*, has remarkable Expressions. *Why are Infants Baptized, says the Pelagian?* The Orthodox answers, *That in Baptism their*

[1 At a meeting of the General Association of the Colony of Connecticut, 1738, "It was inquired—whether the infant slaves of Christian masters may be baptized in the right of their masters—they solemnly promising to train them in the nurture and admonition of the Lord: and whether it is the duty of such masters to offer such children and thus religiously to promise. Both questions were affirmatively answered. *Records as reported by Rev. C. Chapin, D. D., quoted in Jones's Religious Instruction of the Negroes, etc., p. 34.*]

Sins may be remitted. The *Pelagian* replies, Where did they ever sin? The *Orthodox* rejoyns, that *S. Paul* shall answer for him, who says in the fifth of the *Rom.*, *Death reign'd from Adam to Moses, even over those who had not sinn'd, according to the similitude of Adam's Transgression.* And he quotes *St. Cyprian* in the same place, both to his and our Purpose, *That if Remission of Sins is given even to greater and more notorious Sinners, and none is Excepted from Grace, none prohibited from Baptism, much less ought an Infant to be deny'd Baptism, who has no Sin of his own, but only that of his Father Adam to answer for.* This for Children, and there's yet less doubt of those who are of Age to answer for themselves, and would soon learn the Principles of our Faith, and might be taught the Obligation of the Vow they made in Baptism, as there's little doubt but *Abraham* instructed his *Heathen Servants*, who were of Age to learn, in the Nature of *Circumcision*, before he *Circumcis'd* them; nor can we conclude much less from God's own noble Testimony of him, *Gen. 18. 19. I know him, that he will command his Children and his Household, and they shall keep the way of the Lord.*

“What then should hinder but these be *Baptized*? If only the Covetousness of their Masters, who for fear of losing their Bodies, will venture their Souls; which of the two are we to esteem the greater *Heathens*? Now that this is notorious Matter of Fact, that they are so far from persuading those poor Creatures to Come to *Baptism*, that they discourage them from it, and rather hinder them as much as possible, though many of the wretches, as we have been informed, earnestly desire it; this we believe, none that are concern'd in the Plantations, if they are ingenuous, will deny, but own they don't at all care to have them Baptized. Talk to a *Planter* of the *Soul* of a *Negro*, and he'll be apt to tell ye (or at least his Actions speak it loudly) that the Body of one of them may be worth twenty Pounds; but the Souls of an hundred of them would not yield him one Farthing; and therefore he's not at all solicitous about them, though the true Reason is indeed, because of that Custom of giving them their Freedom after turning Christians, which we know not if it be Reasonable; we are sure the Father of the *Faithful* did not so by those Servants whom he had Circumcis'd. 'Tis no where required in Scripture. *St. Paul* indeed bids Masters not be *cruel* and *unreasonable* to their Slaves, especially if Brethren or Christians; but he no where bids them

give 'em their Liberty, nor do's Christianity alter any *Civil Right*; nor do's the same Apostle, in all his excellent Plea for *Onesimus*, once tell his *Master* 'tis his Duty to set him *Free*; all he desires is, he'd again receive and *forgive* him; nay, he tells Servants, 'tis their Duty, in whatever state they are call'd therein to abide; besides, some Persons, nay, Nations seem to be born for Slaves; particularly many of the *Barbarians* in *Africa*, who have been such almost from the beginning of the World, and who are in a much better Condition of Life, when Slaves among us, then when at Liberty at Home, to cut Throats and Eat one another, especially when by the Slavery of their Bodies, they are brought to a Capacity of Freeing their Souls from a much more unupportable Bondage. Though in the mean time, if there be such a Law or Custom for their *Freedom*, to encourage 'em to Christianity, be it reasonable or otherwise, this is certain, that none can excuse those who for that Reason should any way hinder or discourage 'em from being Christians; some of whose excuses are almost too shameful to repeat, since they seem to reflect on the Christian Religion, as if that made Men more untractable and ungovernable, than when bred in Ignorance and Heathenism, which must proceed from the Perverseness of some Tempers, as before, fitter for *Slaves* than *Freedom*; or for want of good Instruction, when they have nothing but the name of Christianity, without understanding any thing of the Obligation thereof; or Lastly, From the bad Examples of their Master's themselves, who live such lives as often scandalize these honest Heathens."

We shall force no inferences from this document as to the character of the legislation against which it was directed. It is an argument for the "right to Religion," in that day so universally denied, in practice at least, to enslaved Indians and Negroes, and their offspring, that it would be strange, if true, that Massachusetts furnished any but occasional exceptions to the prevailing rule.¹

¹ "Slaves were admitted to be church members at a period when church members had peculiar political privileges." *Quincy's Reports*, 30, note. This is Mr. Justice Gray's statement on the following authorities:

We have previously noticed Sewall's "essay" to prevent Indians and Negroes being rated with brutes in the tax-laws, in the year 1716. Three years later, a new occasion presented itself for the renewal of his efforts in behalf of the oppressed. A master had killed his negro slave, and was about to answer for the offence before the Court. One of the judges seems to have desired the aid and counsel of the Chief Justice in his

1. *Winthrop's Journal*, II., 26, and Savage's note. "Mo. 2. 13. [1641]. A negro maid, servant to Mr. Stoughton of Dorchester, being well approved by divers years' experience, for sound knowledge and true godliness, was received into the church and baptized." Mr. Savage's note is, "Similar instances have been common enough ever since."

2. *Ancient Charters*, 117. "To the end the body of the freemen may be preserved of honest and good men: It is ordered, that henceforth no man shall be admitted to the freedom of this Commonwealth, but such as are members of some of the churches within the limits of this jurisdiction."

3. *Bancroft's History U. S.*, I., 360. "The servant, the bondman, might be a member of the church, and therefore a freeman of the Company."

Notwithstanding this array of authority, we must suggest our doubts, 1st. Whether the notice itself by Winthrop is not a palpable evidence of the extraordinary and exceptional character of the incident that a negro maid-servant should be baptized and received into the church? Mr. Savage's remark cannot be regarded as authority, not being sustained by references to any similar instances. 2d. Whether a single instance has ever been found or is known in the history of Massachusetts, during the period referred to, in which a servant or bondman, black or white, actually became a freeman of the Company?

Mr. Palfrey indulges in some pleasing speculations on this topic. "A negro slave might be a member of the church, and this fact presents a curious question. As a church-member, he was eligible to the political franchise; and if he should be actually invested with it, he would have a part in making laws to govern his master,—laws with which his master, if a non-communicant, would have had no concern, except to obey them." Touchstone wisely said there was "much virtue in If," and Dr. South has a maxim that "we are not to build certain rules on the contingency of human actions." Whether the historian recalled either "instance," we cannot say; but here he evidently recognized the impropriety of constructing history on a frame of conjectural contingencies, and frankly admitted at the end of his

preparations for the case, and Sewall's Letter-Book preserves the following memoranda of what he communicated.

“The poorest Boys and Girls in this Province, such as are of the lowest Condition; whether they be English, or Indians, or Ethiopians: They have the same Right to Religion and Life, that the Richest Heirs have.

“And they who go about to deprive them of this Right, they attempt the bombarding of HEAVEN, and the Shells they throw, will fall down upon their own heads.

“Mr. Justice Davenport, Sir, upon your desire, I have sent you these *Quotations*, and my *own Senti-*

note, “it is improbable that the Court would have made a slave—while a slave—a member of the Company, though he were a communicant.” *History of New England*, II., 30, note. As to baptism of slaves in Massachusetts, see *ante*, pp. 58–59. Compare *Hurd's Law of Freedom and Bondage*, Vol. I., pp. 165, 210, 358. The famous French *Code Noir* of 1685 obliged every planter to have his Negroes baptized, and properly instructed in the doctrines and duties of Christianity. Nor was this the only important and humane provision of that celebrated statute, to which we may seek in vain for any parallel in British Colonial legislation. Its influence was felt in England, and may have given rise to those humane instructions, one of which we have already quoted (p. 52). Another required his Majesty's Governors “with the assistance of our Council to find out the best means to facilitate and encourage the Conversion of Negroes and Indians to the Christian Religion.” *N. Y. Col. Doc.*, III., 374. Evelyn, in his Diary, gives an interesting account of the determination of the King, James II., on this point. At Winchester, 16 September, 1685, he says, “I may not forget a resolution which his Majesty made, and had a little before entered upon it at the Council Board at Windsor or Whitehall, that the negroes in the Plantations should all be baptized, exceedingly declaiming against the impiety of their masters prohibiting it, out of a mistaken opinion that they would be *ipso facto* free; but his Majesty persists in his resolution to have them christened, which piety the Bishop blessed him for.” *Works*, II., 245. This was good Bishop Ken, the Christian Psalmist.

ments. I pray GOD, the Giver and Guardian of Life, to give his gracious Direction to you, and the other Justices; and take leave, who am your brother and most humble servant,

“ Samuel Sewall.

“ Boston, July 20, 1719.

“ I inclosed also the *Selling of Joseph*, and my Extract out of the *Athenian Oracle*.

“ To Addington Davenport, Esqr., etc., going to Judge Sam^l. Smith of Sandwich, for killing his Negro.”

That such arguments were necessary, or even regarded as appropriate on such an occasion, is a fact full of meaning. We have previously intimated a doubt whether the slave could claim any right or privilege of protection under the laws which were known as the “*Liberties of Servants* ;” and in connection with the instructions to Andros in 1688, we have called the attention of the reader to the distinction between the *Christian* servants or slaves and the *Indians and Negroes*. The former were to be protected against the inhuman severity of ill-masters or overseers, while the latter were to be so far advanced in the scale of humanity, that the “*wilful killing*” of them should “be punished with *death*, and a fitt penalty imposed for the maiming of them.”

We cannot, however, at present attempt to determine what were the actual legal restraints upon the power of a master over his slave, in Massachusetts. We do not know that the materials for such a deter-

mination exist anywhere save in such records as remain of those ancient tribunals of the Colony and Province by which alone the rights of persons and of property were then, as now, judicially ascertained and regulated. There are abundant modern statements of opinion on these points, but we cannot recall a single instance in which these statements are fortified by good and sufficient testimony from the ancient and contemporary records or authorities; and we cannot doubt that the reader of these notes will sympathize in our desire to rest on facts rather than opinions. For example, in the particular case above referred to, the awful solemnity with which the Chief Justice communicates his charge to his brother magistrate when about to "judge" a master for "killing his Negro," gives peculiar interest to the result; and it is greatly to be regretted that the record of the trial, conviction, and punishment of such an offender should be concealed among the neglected rubbish of any Massachusetts Court-House. If Samuel Smith of Sandwich was hung for the murder of his slave in Massachusetts in the year 1719, it is due to the historic fame of the Province that the world should know it!

We are perfectly aware that the opinion has prevailed that the negro or mulatto or Indian slave in Massachusetts, "always had many rights which raised him far above the *absolute* slave." These are nowhere more favorably stated than by Nathan Dane, in his great work on American Law. *Abridgment*, II., 313. He considers the subject in eight points of view:

"1. The master has no control over the religion

of such slave, any more than over the religion of any other member of his family ;

“ 2. None over his life ; if he killed him, he was punishable as for killing a freeman ;

“ 3. The master was liable to his slave’s action, for beating, wounding or immoderately chastising him, as much as for immoderately correcting an apprentice, or a child ;

“ 4. The slave was capable of holding property, as a devisee or legatee, and as recovered for wounds, etc., so much so, if the master took away such property, his slave could sue him by *prochein ame* ;

“ 5. If one took him from his master without his consent, he could not have trover, but only sue, as for taking away his other servant ; on the whole the slave had the right of property and of life, as apprentices had, and the only difference was ‘ an apprentice is a servant for time, and the slave is a servant for life.’ In Connecticut, the slave was, by statute, specially forbidden to contract ; no such statute is recollected in Massachusetts ;

“ 6. If a slave married a free woman, with the consent of his master, he was emancipated, for his master had suffered him to contract a relation inconsistent with a state of slavery ; ‘ hereby the master abandoned his right to him as a slave, as a minor child is emancipated from his father when he is married.’ *Ld. Raymond*, 356 ;

“ 7. A slave however could be sold, and in some states be taken in execution for his master’s debts ; but no evidence is found of such taking in execution in Massachusetts ;

“ 8. On the principles of the English Common Law, men may be made *slaves for life for crimes*, and so clearly, by our present law. Property in a negro [was] acquired without deed. 1 *Dal.*, 169.”

Now, if all these points had been well taken and could be fortified by the necessary amount of historical testimony, they would unquestionably make a very good case. But unhappily they are mainly theoretical statements derived from abstract reasoning on general principles, of which no such applications were thought of in the period to which they are assigned. Yet the formality with which they are stated, and the dignified place they hold in a book of great authority, give them an importance beyond the conjectures which are generally ventured as to how far the lot of the slave was mitigated in Massachusetts.

Mr. Dane copied them with but slight alterations, chiefly in favor of Massachusetts, from the treatise of Judge Reeve on “*Domestic Relations*,” pp. 340-41, published in 1816. There is no reference to the statutes, nor to any judicial decisions on any point, excepting as here quoted, either in original or copy.

Shall we be accounted presumptuous, if we add a few comments as well as a reference to the facts already presented, which must throw great doubts over the whole array of rights thus claimed as having been accorded to slaves in Massachusetts?

The right to religion and life was not clearly recognized as belonging equally to bond-slave and free-man. Mr. Dane altered Judge Reeve’s statement of the latter point. Judge Reeve said, “if he killed him,

he was *liable to the same punishment* as for killing a freeman." The alteration indicates the nature of the doubt which may have arisen in the mind of Mr. Dane when he wrote it, "he was *punishable* as for killing a freeman." No doubt he was punishable. The incident which we have presented of the master called to answer before the Court for the fact of killing his negro shows this. So too, in the first Massachusetts Code, even "the Bruite Creature" is protected against "Tirraný and Crueltie" by the very next statute after that which establishes slavery—a significant sequence!

Here let it be remembered that the original law of slavery in Massachusetts gave to slaves "all the liberties and Christian usages which the law of God, established in Israel concerning such persons, doth morally require." Now the Mosaic Law here recognized and reënacted did not protect the life of a heathen slave against his master's violence, by the penalty of "life for life," and although such violence might be punished, the kind and degree of punishment is not now to be ascertained. *Exodus*, xxi., 20, 21. And there is a marked distinction to be observed in regard to the Hebrew, though a slave, who is favorably compared with the hired servant and sojourner in contrast with the bondman. *Leviticus*, xxv., 39, 40. To what extent the "rigor" of heathen bondage among the Jews was softened into "liberties and Christian usages" among the Puritans is a question of fact and not of opinion. What was morally required by the law of God established in Israel, in this as in all similar business, was a matter reserved for their own decision, in their own General Court and other tribunals. And

this general provision in the original law seems to have been the only one to which the slave could appeal, or more properly by which the conduct of the master could be regulated, in the government and disposition of his chattel. It is certain that most of the special provisions of the law respecting masters and servants had no application to slaves, and we have already expressed the doubt whether slaves enjoyed any of the privileges of servants under that law.

Where is the evidence that Indians and Negroes in bondage were entitled to protection as other servants? and that the master was liable to his slave's action for beating, wounding, or immoderately chastising, etc.? It is far more probable that the condition of the servant was practically assimilated to that of the slave, than that the slave shared any of the privileges accorded by statute to the servant. It would add much to our knowledge on this subject, if the examples should be adduced to show at what period in the history of Massachusetts the Indian and negro slave *first* acquired a status in Court as a prosecutor, or in any other capacity than as a criminal at the bar, before which he was often enough called to answer under the unjust and unequal legislation of that period. If it was at any time before the American Revolution—how came it to pass that, in 1783, a fine of forty shillings against a master for “beating, bruising, and otherwise evilly intreating” his negro-slave, gave “a mortal wound to slavery in Massachusetts?” And further, if a slave could recover against his master damages for cruelty, why was it necessary to resort to the suit “by *prochein ame*” to enable him to keep his recovery?

Again, where is the evidence that slaves were capable of holding property, etc., beyond the occasional and exceptional permission to enjoy some privileges as a *peculium*, with the profits of which they might in some cases be enabled even to purchase their manumission? Could slaves take and hold real estate in Massachusetts? "No servant, either man or maid," was permitted "to give, sell or truck any commodity whatsoever without license from their Masters, during the time of their service, under pain of fine, or corporal punishment, at the discretion of the Court, as the offence shall deserve." *Mafs. Laws, Ed. 1672, p. 104.* Is it probable that a slave was on any better footing in this respect than a white servant?

As to the form of action by which a master should sue for the unlawful taking of his slave without his consent—the only examples of such suits in Massachusetts to which we are able to refer, contradict the opinion that he could not have trover, but must sue in trespass *per quod servitium amisit*. *Goodspeed v. Gay, Mafs. Sup. Court Records, 1763, fol. 47, 101. Allison v. Cockran, Ibid. 1764, fol. 103.* The right to maintain trover for a negro was a matter of course in Massachusetts, for there can be no question as to the fact that he might be held and sold as a chattel under the laws of that Colony and Province, and trover lies by any one who has any special property in a chattel, with the right to immediate possession. *Compare Gray, in Quincy's Reports, 93, note, where all the authorities are cited.*

The marriage of slaves in Massachusetts has already

been noticed, and it is obvious that the legislators of Massachusetts never intended that such marriages should confer any rights or impose any duties which were incompatible with the state of slavery; and it may safely be alleged that no instance can be produced of the emancipation of a slave as a legal consequence of marriage with a free woman.¹

The candor of the admission "that a slave however could be sold, and in some states be taken in execution for his master's debts," is unhappily qualified by the assertion that "no evidence is found of such taking in execution in Massachusetts." The only reason it was not found was, that it was not hunted; for the failure to find it must have been either from want of disposition or lack of diligence.

But we have said enough on these topics to put those who are most interested upon inquiry. Those who are familiar with such researches and have opportunities of easy reference to the records and files of the Courts in Massachusetts during the period of which we are writing, can probably collate a sufficient number of examples to settle all these questions by authority. They will undoubtedly illustrate the gradual amelioration of all the various forms of oppression, but these changes must be held to mark the era of their historical development. If they prove that the doubts we have

¹ We have been unable to verify the reference to "Lord Raymond, 356," as to the analogous emancipation of a minor child "from his father when he is married"—but we have high authority for the statement that the laws of Massachusetts know of no such emancipation. *15 Mass. Reports*, 203.

suggested are not well founded, we shall be most gratified with the result.

The ultimate theory of slavery in all ages and nations has been reduced to a very brief and comprehensive statement. Dr. Maine, in his admirable treatise on Ancient Law, says that "the simple wish to use the bodily powers of another person as a means of ministering to one's own ease or pleasure is doubtless the foundation of slavery and as old as human nature." And again, "there seems to be something in the institution of slavery which has at all times either shocked or perplexed mankind, however little habituated to reflection, and however slightly advanced in the cultivation of its moral instincts." To satisfy the conscience of the master, the Greeks established the idea of intellectual inferiority of certain races and consequent natural aptitude for the servile condition. The Romans declared the doctrine of a supposed agreement between victor and vanquished, in which the first stipulated for the perpetual services of his foe, and the other gained in consideration the life which he had legitimately forfeited. *Compare Maine, 162-66.*

The Puritans of New England appear to have been neither shocked nor perplexed with the institution, for which they made ample provision in their earliest code. They were familiar with the Greek and Roman ideas on the subject, and added the conviction that slavery was established by the law of God, and that Christianity always recognized it as the antecedent Mosaic practice. On these foundations, is it strange that it held its place so long in the history of Massachusetts?

It has been said that the first step towards the destruction of slavery was the restraint or prohibition of the importation of slaves. But it would be absurd to regard laws for this purpose as an expression of humane consideration for the negroes. Graham, in his history, characterizes such a view of the most stringent one ever made in any of the Colonies, as an "impudent absurdity." *Hist. U. S.*, iv., 78. We have already noticed the Massachusetts acts of 1705, with the additional acts of 1728 and 1739, imposing and enforcing the collection of an import duty of four pounds per head upon all negroes brought into the Province.

There is no indication in the acts themselves, nor have we been able to find any evidence, that they were intended other than as revenue acts, beyond that which we have presented in these notes.

We have heretofore quoted the instruction of the town of Boston in 1701. It is not improbable that it was the result of Judge Sewall's efforts in 1700. Fruitless as it was, it shows that even then some were wise enough to see that the importation of negroes was not so beneficial to the Crown or Country as that of white servants would be. In 1706, an essay or "*Computation that the Importation of Negroes is not so profitable as that of White Servants,*" was published in Boston, which may properly be reproduced here. It was the first newspaper article against the importation of negroes published in America, and appeared in the *Boston News-Letter*, No. 112, June 10, 1706. We are inclined to attribute this article also to Judge Sewall.

“By last Year’s Bill of Mortality for the Town of *Boston*, in *Number 100 News-Letter*, we are furnished with a List of 44 Negroes dead last year, which being computed one with another at 30*l.* per Head, amounts to the Sum of One Thousand three hundred and Twenty Pounds, of which we would make this Remark : That the Importing of Negroes into this or the Neighboring Provinces is not so beneficial either to the Crown or Country, as White Servants would be.

“For Negroes do not carry Arms to defend the Country as Whites do.

“Negroes are generally Eye-Servants, great Thieves, much addicted to Stealing, Lying and Purloining.

“They do not People our Country as Whites would do whereby we should be strengthened against an Enemy.

“By Encouraging the Importing of White Men Servants, allowing somewhat to the Importer, most Husbandmen in the Country might be furnished with Servants for 8, 9, or 10*l.* a Head, who are not able to launch out 40 or 50*l.* for a Negro the now common Price.

“A Man then might buy a White Man Servant we suppose for 10*l.* to serve 4 years, and Boys for the same price to Serve 6, 8, or 10 years ; If a White Servant die, the Loss exceeds not 10*l.* but if a Negro dies, ’tis a very great loss to the Husbandman ; Three years Interest of the price of the Negro, will near upon if not altogether purchase a White Man Servant.

“If Necessity call for it, that the Husbandman must fit out a Man against the Enemy ; if he has a Negro he cannot send him, but if he has a White Servant, ’twill answer the end, and perhaps save his Son at home.

“Were Merchants and Masters Encouraged as already said to bring in Men Servants, there needed not be such Complaint against Superiors Impressing our Children to the War, there would then be Men enough to be had without Impressing.

“The bringing in of such Servants would much enrich this Province because Husbandmen would not only be able far better to manure what Lands are already under Improvement, but would also improve a great deal more that now lyes waste under Woods, and enable this Province to set about raising of Naval Stores, which would be greatly advantageous to the Crown of England, and this Province.

“For the raising of Hemp here, so as to make Sail-cloth and

Cordage to furnish but our own shipping, would hinder the Importing it, and save a considerable sum in a year to make Returns for which we now do, and in time might be capacitated to furnish England not only with Sail-cloth and Cordage, but likewise with Pitch, Tar, Hemp, and other Stores which they are now obliged to purchase in Foreign Nations.

“Suppose the Government here should allow Forty Shillings per head for five years, to such as should Import every of these years 100 White Men Servants, and each to serve 4 years, the cost would be but 200*l.* a year, and a 1000*l.* for the 5 years. The first 100 Servants, being free the 4th year they serve the 5th for Wages, and the 6th there is 100 that goes out into the Woods, and settles a 100 Families to Strengthen and Baracado us from the Indians, and also a 100 Families more every year successively.

“And here you see that in one year the Town of Boston has lost 1320*l.* by 44 Negroes, which is also a loss to the Country in general, and for a less loss (if it may be improperly be so called) for a 1000*l.* the Country may have 500 Men in 5 years time for the 44 Negroes dead in one year.

“A certain person within these 6 years had two Negroes dead computed both at 60*l.* which would have procured him six white Servants at 10*l.* per head to have Served 24 years, at 4 years apiece, without running such a great risque, and the Whites would have strengthened the Country, that Negroes do not.

“’Twould do well that none of those Servants be liable to be Impressed during their Service of Agreement at their first Landing.

“That such Servants being Sold or Transported out of this Province during the time of their Service, the Person that buys them be liable to pay 3*l.* into the Treasury.”

A third of a century after the publication of Judge Sewall’s tract, another made its appearance, entitled “A Testimony against that Anti-Christian Practice of making Slaves of Men Wherein it is shewed to be contrary to the Dispensation of the Law, and Time of the Gospel, and very opposite both to Grace and Nature. By Elihu Coleman. Matthew 7. 12.

Therefore all things whatsoever ye would that men should do unto you, do ye even so to them, for this is the Law and the Prophets. Printed in the year 1733." *MS. Copy in the Library of the American Antiquarian Society.* This writer was a minister of the Society of Friends, and of Nantucket. His work was written in 1729-30. *Coffin's Newbury*, p. 338. *Macy's Nantucket*, p. 279.

At the Nantucket Monthly Meeting, in 1716, it was determined as "y^e sense and judgment of this meeting, that it is not agreeable to truth for Friends to purchase slaves and hold them term of life." *Macy's Nantucket*, p. 281.

In 1755, March 10, the town of Salem authorized a petition to the General Court against the importation of negroes. *Felt's Salem*, II., 416. There may have been other occasional efforts of this sort, but they must have been comparatively few and fruitless.

We have thus noticed the most important, if not the only anti-slavery demonstrations which appear in the history of Massachusetts down to the period immediately preceding the Revolution. Excepting those already mentioned, we know of no public advocates for the slave in that Colony and Province until the cry of resistance to British tyranny began to resound through the Colonies.

James Otis's great speech in the famous Cause of the Writs of Assistance in 1761—the first scene of the first act of opposition to the arbitrary claims of Great Britain—declared the rights of man, inherent and inalienable. In that speech the poor negroes were not

forgotten. None ever asserted their rights in stronger terms. *Adams's Works*, x., 315. Mr. Bancroft postpones Otis's "protest against negro slavery" to a later year (1764), when he translated the "scathing satire" of Montesquieu in his assertion and proof of the rights of the British Colonies. This difference in time is not material for our present purpose. Many years were to pass away before his views on this subject were accepted by the children's children of those to whom his words then sounded like a rhapsody and an extravagance.

It was a strong arm, and it struck a sturdy blow, but the wedge recoiled and flew out from the tough black knot of slavery, which was destined to outlast the fiercest fires of the Revolution in Massachusetts, thus kindled with live coals from the altar of universal liberty.

John Adams heard the words of Otis, and "shuddered at the doctrine he taught," and to the end of his long life continued "to shudder at the consequences that may be drawn from such premises." Yet John Adams "adored the idea of gradual abolitions." *Works*, x., 315. For his later views on emancipation, see *Works*, vi., 511., x., 379.

The views expressed by Otis must have sounded strangely in the ears of men who "lived (as John Adams himself says he did) for many years in times when the practice [of slavery] was not disgraceful, when the best men in my vicinity thought it not inconsistent with their character." *Works*, x., 380. If there was a prevailing public sentiment against slavery in Massachusetts—as has been constantly claimed of

late—the people of that day, far less demonstrative than their descendants, had an extraordinary way of not showing it. Hutchinson, who was undoubtedly the man of his time most familiar with the history of his native province, says in his first volume, published in 1764, *p.* 444, “Some judicious persons are of opinion that the permission of slavery has been a publick mischief.” This is certainly the indication of a very mild type of opposition—by no means of a pervading public sentiment.

John Adams was not alone in his astonishment at the ideas expressed by Otis. These ideas were new as they were startling to the people of Massachusetts in that day. And to the calm judgment of the historian there is nothing strange in the fact that the foremost man of his time in that province should have shuddered at the doctrines which Otis taught. More than a century passed away before all the ancient badges of servitude could be removed from the colored races in Massachusetts, if indeed it be even now true that none of those disabilities which so strongly mark the social status of the negro still linger in the legislation of that State.

VI.

AMONG the strongest indications of the coming change in opinion on this subject, the “suits for liberty,” as they are called, challenge attention. They are also known as “suits for freedom,” and “suits for service,” in which slaves “sued their masters for free-

dom and for recompence for their service, after they had attained the age of twenty-one years.”¹ *M. H. S. Coll.*, 1., iv. 202.

There had been a case in Connecticut as early as 1703, in which a master was summoned to answer, before a County Court, “to Abda, a mulatto, in an action of the case, for his unjust holding and detaining the said Abda in his service as his bondsman, for the space of one year last past.” The damages were laid at 20*l.* The result was a verdict against the master for 12*l.* damages—“thereby virtually establishing Abda’s right to freedom.” *J. H. Trumbull’s Notes from the Original Papers, etc. Conn. Courant, Nov. 9, 1850.* In this case, the ground on which the slave rested his claim appears to have been his white blood.

The earliest of these cases in Massachusetts, of which we have any knowledge, is noticed in the Diary of John Adams. It was in the Superior Court at Salem, in 1766. Under date of Wednesday, November 5th, he says: “Attended Court; heard the trial of an action of trespass, brought by a mulatto woman, for damages, for restraining her of her liberty. This is called suing for liberty; the first action that ever I knew of the sort, though I have heard there have been many.” *Works*, 11., 200.

¹ If any of these decisions in Massachusetts sustained the claims for wages, they are in strong contrast with the highest English authority of the period. Many actions were brought in the English Courts, by negro slaves against their masters for wages; but Lord Mansfield, the great oracle of the Common Law, was accustomed to deal very summarily with them. He has left a very emphatic record on this point:

“When slaves have been brought here, and have commenced actions for their wages, I have always nonsuited the plaintiff.” *The King v. the Inhabitants of Thames Ditton.* 4 *Doug.*, 300.

We suppose this to have been the case of *Jenny Slew vs. John Whipple, jr.*, the record of which we copy here.

“JENNY SLEW of Ipswich in the County of Essex, spinster, Pltff., agst. JOHN WHIPPLE, Jun., of said Ipswich Gentleman, Deft., in a Plea of Trespass for that the said John on the 29th day of January, A. D. 1762, at Ipswich aforesaid with force and arms took her the said Jenny, held and kept her in servitude as a slave in his service, and has restrained her of her liberty from that time to the fifth of March last without any lawfull right & authority so to do and did her other injuries against the peace & to the damage of said Jenny Slew as she saith the sum of twenty-five pounds. This action was first brought at last March Court at Ipswich when & where the parties appeared & the case was continued by order of Court to the then next term when & where the Pltff appeared & the said John Whipple Jun, came by Edmund Trowbridge, Esq. his attorney & defended when he said that there is no such person in nature as Jenny Slew of Ipswich aforesaid, Spinster, & this the said John was ready to verify wherefore the writ should be abated & he prayed judgment accordingly which plea was overruled by the Court and afterwards the said John by the said Edmund made a motion to the Court & praying that another person might endorse the writ & be subject to cost if any should finally be for the Court but the Court rejected the motion and then the Deft. saving his plea in abatement aforesaid said that he is not guilty as the plaintiff contends, & thereof put himself on the Country, & then the cause was continued to this term, and now the Pltff. reserving to herself the liberty of joining issue on the Deft's plea aforesaid in the appeal says that the defendant's plea aforesaid is an insufficient answer to the Plaintiff's declaration aforesaid and by law she is not held to reply thereto & she is ready to verify wherefore for want of a sufficient answer to the Plaintiff's declaration aforesaid she prays judgment for her damages & costs & the defendant consenting to the waving of the demurrer on the appeal said his plea aforesaid is good & because the Pltff. refuses to reply thereto He prays judgment for his cost. It is considered by the Court that the defendant's plea in chief aforesaid is good & that the said John Whipple recover of the said Jenny Slew costs tax at the Pltff appealed to the next Superior Court of Judicature to be holden

for this County & entered into recognizance with sureties as the law directs for prosecuting her appeal to effect." *Records of the Inferior Court of C. C. P., Vol. —, (Sep. 1760 to July 1766), page 502.*

"JENNY SLEW of Ipswich, in the County of Essex, Spinster, Appellant, versus JOHN WHIPPLE, Jr. of said Ipswich, Gentleman Appellee from the judgment of an Inferior Court of Common Pleas held at Newburyport within and for the County of Essex on the last Tuesday of September 1765 when and where the appellant was plaintiff, and the appellee was defendant in a plea of trespass, for that the said John upon the 29th day of January, A. D. 1762, at Ipswich aforesaid with force and arms took her the said Jenny held & kept her in servitude as a slave in his service & has restrained her of her liberty from that time to the fifth of March 1765 without any lawful right or authority so to do & did other injuries against the Peace & to the damage of the said Jenny Slew, as she saith, the sum of twenty-five pounds, at which Inferior Court, judgment was rendered upon the demurrer then that the said John Whipple recover against the said Jenny Slew costs. This appeal was brought forward at the Superior Court of Judicature &c., holden at Salem, within & for the County of Essex on the first Tuesday of last November, from whence it was continued to the last term of this Court for this County by consent & so from thence unto this Court, and now both parties appeared & the demurrer aforesaid being waived by consent & issue joined upon the plea tendered at said Inferior Court & on file. The case after full hearing was committed to a jury sworn according to law to try the same who returned their verdict therein upon oath, that is to say, they find for appellant reversion of the former judgment four pounds money damage & costs. It's therefore considered by the Court, that the former judgment be reversed & that the said Slew recover against the said Whipple the sum of four pounds lawful money of this Province damage & costs taxed *9s. 6d.*

"Exon. issued 4 Dec. 1766." *Records of the Superior Court of Judicature (Vol. 1766-7), page 175.*

The case of *Newport vs. Billing* has been previously noticed, *p. 22, note*. It is not improbable that this was the case in which John Adams was en-

gaged, in the latter part of September, 1768, when he “attended the Superior Court at Worcester and the next week proceeded to Springfield, where I was accidentally engaged in a cause between a negro and his master.” *Works*, II., 213.

The next case was that which has been for more than half a century the grand *cheval de bataille* of the champions of the historic fame of Massachusetts—the case of *James v. Lechmere*, in Middlesex, in 1769. This is the case referred to in a recent paper read before the Massachusetts Historical Society, in which the writer felt at liberty to “indulge a pride equally just and generous, that here, in the Courts of the Province, the ruling of Lord Mansfield [in the case of *Somerfet*] was anticipated by two years, in favor of personal freedom and human rights.” *M. H. S. Proc.*, 1863-4, p. 322. That is to say, as the same writer expresses it elsewhere, in the case of *James v. Lechmere*, “the right of a master to hold a slave had been denied, by the Superior Court of Massachusetts, and upon the same grounds, substantially, as those upon which Lord Mansfield discharged *Somerfet*,¹ when his case came before him.” *Washburn's Judicial Hist. of Mass.*, 202. Compare also *M. H. S.*

¹ The absurdity of the claim set up for Massachusetts is not diminished by the fact that no case in the history of English Law has been more misunderstood and misrepresented than the *Somerfet* case itself.

Thirteen years later (27 April, 1785), Lord Mansfield himself stated expressly “that his decision went no farther than that the master cannot by force compel the slave to go out of the Kingdom.” At the same time he also said, with reference to the alleged extinction of villenage, “villains in gross may in point of law subsist at this day. But the change of customs and manners has effectually abolished them in point of fact.” *The King v. The Inhabitants of Thames Ditton*, 4 *Doug.*, 300. In the same year, the

Proc., 1855-58, pp. 190-91, and *Coll.*, iv., iv., pp. 334-5.

It is a pity to disturb these cherished fancies, but the truth is that this case, so often quoted "as having determined the unlawfulness of slavery in Massachusetts, is *shown by the records and files of Court to have been brought up from the Inferior Court by sham demurrer, and, after one or two continuances, settled by the parties. Rec.*, 1769, fol. 196." *Gray in Quincy's Reports*, 30, note.

We must not omit to note in passing another interesting fact recently developed. James Somerset, the subject of the great English "suit for liberty," was not a Virginia or West India slave, as has been

same great exponent of English Law expressly recognized property in slaves on board a slave-trader, in an action on a policy of assurance. The demand on the policy was for the loss of a great many slaves by mutiny. *Jones vs. Schmoll*. 1 *Term Reports*, 130, note. Add to all this the notorious facts that slaves were bought and sold in England long after the time when it has been alleged that "Lord Mansfield first established the grand doctrine that the air of England is too pure to be breathed by a slave;" that it was not until 1807 that she abolished her slave-trade, and twenty-seven weary years more elapsed before she set her slaves free in her colonies; and we can, without referring to the earlier history of her royal and parliamentary, national and individual patronage of slavery and the slave-trade, or her cowardly sympathy with the slaveholders' rebellion, estimate the value of Earl Russell's recent declaration, that Great Britain has always been hostile to slavery. "The British nation have always entertained, and still entertain, the deepest abhorrence of laws by which men of one color were made slaves of men of another color. The efforts by which the United States Government and Congress have shaken off slavery have, therefore, the warmest sympathies of the people of these Kingdoms." *Earl Russell to Mr. Adams*, August 20, 1865. No language or history within our knowledge furnishes fit epithet or parallel for such consummate hypocrisy and reckless disregard of the truth of history. It would be an insult to the "historic fame" of that unhappy Jewish sect to refer to the Pharisees. Perhaps it is enough to say it is the empty "palaver" of a British Prime Minister!

generally stated, but a negro-slave from Massachusetts! where he lived with his owner, Mr. Charles Stewart, who held an office in the customs and resided in Boston. *Proc. M. H. S.*, 1863-64, p. 323.

Mr. Stewart left Boston on the first of October, 1769, and arrived in London on the tenth of November following. He was accompanied by this slave, who continued in his service until the first of October, 1771, when he ran away. His owner found means to seize and secure him, and had placed him on board a vessel bound for Jamaica, in the custody of the captain, who was to carry him there to be sold. This was on the 26th November, 1771. He was rescued by a writ of habeas corpus, and the proceedings in the case terminated in his release on the 22d June, 1772

There was a case in Nantucket, about the years 1769-1770, in which Mr. Rotch, a member of the Society of Friends, received on board a vessel called the Friendship, at that time engaged in the whale-fishery, and commanded by Elisha Folger, a young slave by the name of "Boston," belonging to the heirs of William Swain. At the termination of the voyage, he paid to "Boston" his proportion of the proceeds. The master, John Swain, brought an action against the captain of the vessel, in the Court of Common Pleas of Nantucket, for the recovery of his slave; but the jury returned a verdict in favor of the defendant, and the slave is said to have been "manumitted by the magistrates." Swain took an appeal from this judgment to the Supreme Court at Boston, but never prosecuted it. *Lyman's Report*, 1822.

Another case is mentioned in a letter of Thomas Pemberton, dated at Boston, March 12, 1795, in reply to the Circular of Dr. Jeremy Belknap, dated Boston, February 17, 1795, as follows:

“The first instance I have heard of a negro requesting his freedom *as his right* belonged, I am informed, to Dr. Stockbridge, of Hanover, in Plymouth County. His master refused to grant it, but by assistance of lawyers he obtained it, this about the year 1770.”

Mr. Gray mentions the case of *Cæsar vs. Taylor*, in Essex, 1772, in which “the wife of a slave was not allowed to testify against him,” and “the defendant in an action of false imprisonment was not permitted under the general issue to prove that the plaintiff was his slave.” *Quincy's Reports*, 30, note.

In September or October, 1773, an action was brought in the Inferior Court, in Essex, against Richard Greenleaf, of Newburyport, by Cæsar [Hendrick], a colored man, whom he claimed as his slave, for holding him in bondage. He laid the damages at fifty pounds. A letter from Newburyport, October 10th, says, “We have lately had our Court week when the novel case of Cæsar against his master in an action of fifty pounds lawful money damages for detaining him in slavery was litigated before a jury of the County, who found for the plaintiff *eighteen pounds damages and costs.*” John Lowell, Esq., afterward Judge Lowell, was counsel for the plaintiff. *Coffin's Newbury*, 241, 339.

Nathan Dane notices this case in his *Abridgment and Digest of American Law*. He says:

“As early as 1773, many negroes claimed their freedom, and brought actions of trespass against their masters for restraining them. A. D. 1773, one Cæsar brought trespass against his master, and declared that he, with force and arms, assaulted the plaintiff and imprisoned him, and so with force and arms against the plaintiff’s will, hath there held, kept, and restrained him in servitude, as the said G.’s slave, for so long a time, etc.

“In this case the master protested the plaintiff was his *mulatto slave*, and that he, the master, was not held by law to answer him; but for plea the master said he was not guilty. The parties agreed any special matter might be given in evidence, etc. Counsel, Farnham and Lowell.” *Dane’s Abridgment*, II., 426.

Another case is mentioned as “brought on at the Inferior Court of Common Pleas for the County of Essex for July term [1774], between Mr. Caleb Dodge of Beverly, and his negro servant, in which the referees gave a verdict in favor of the negro, by which he obtained his freedom, there being no law of the province to hold a man to serve for life.” *The Watchman’s Alarm, etc.*, p. 28, note. Yet the writer of this pamphlet suggested the “abolishing of this vile custom of slave-making, either by a law of the province, Common Law, (which I am told has happily succeeded in many instances of late) or by a voluntary releasement.” *Ibid.*, p. 27.

Mr. Dane also refers to the case of *Cæsar vs. Taylor*, and gives the following view of the subject generally:

“In these cases there seem to have been doubts

if slavery existed in Massachusetts; the causes were generally argued on general principles; the masters urged, in support of slavery, the practice of ancient and some modern nations; also the Provincial Statutes of 10 W. 3., ch. 6.; 1 & 2 Anne, ch. 2.; and 4 & 5 Anne, ch. 6.

“The plaintiffs argued that by English Law, *slavery* could not exist, and that we had nothing to do with any other, except the Provincial Statutes; that if these established slavery, it was merely by *implication*, and that natural liberty was never to be taken away by implication; that at common law *partus non sequitur ventrem*, though it might be otherwise by the civil law, which England, in this case, had never adopted; that marriage and providing for children was a right and a duty which only free persons could perform; that the Gospel forbid men to sell their brethren; and that the plaintiffs were *Christians*, and, if held in slavery, could not perform their Christian duties; that even villainage is abolished by English law, and that the common law abhorred slavery. But it was admitted by the plaintiff’s counsel, that slavery might be established by express law; and the defendants urged, and it seems long to have been understood, that the Provincial Statutes did expressly recognize and establish slavery, as in the cases above stated, and in many others.

“In 1773, etc., some slaves did recover against their masters; but these cases are no evidence that there could not be slaves in the Province, for sometimes masters permitted their slaves to recover to get clear of maintaining them as *paupers* when old and infirm;

the effect, as then generally understood, of a judgment against the master on this point of slavery; hence, a very feeble defence was often made by the masters, especially when sued by the old or infirm slaves, as the masters could not even manumit their slaves, without indemnifying their towns against their maintenance, as town paupers." *Dane's Abridgment*, 11., 426-7.

Chief-Justice Parsons also, in the case of *Winchendon vs. Hatfield in error*, confirms this view.

"Several negroes, born in this country of imported slaves demanded their freedom of their masters by suit at law, and obtained it by a judgment of court. The defence of the master was feebly made, for such was the temper of the times, that a restless discontented slave was worth little; and when his freedom was obtained in a course of legal proceedings, the master was not holden for his future support, if he became poor." *IV Mass. Reports*, 128.

The reference by the Chief-Justice to the circumstance that these negroes litigant were "born in this country," points to the question, whether hereditary slavery was legal in Massachusetts? which is also touched in the previous reference by the counsel for the slaves, as stated by Mr. Dane, to the difference between the rules of the Common Law and the Civil Law.

The Rev. Dr. Belknap, in his account of these suits, says, "On the part of the blacks it was pleaded, that the royal charter expressly declared all persons born or residing in the province, to be as free as the King's subjects in Great Britain; that by the laws of England, no man could be deprived of his liberty but by

the judgment of his peers; that the laws of the province respecting an evil existing, and attempting to mitigate or regulate it, did not authorize it; and, on some occasions, the plea was, that though the slavery of the parents be admitted, yet no disability of that kind could descend to children." *M. H. S. Coll.*, 1., iv., 203.

How far the arguments here noticed were urged in these various suits, and whether in any of them these points were judicially stated and determined, we are unable to say. We have previously examined the legal history of hereditary slavery in Massachusetts; and it may be proper in this connection to add something with respect to the other pleas mentioned by Belknap. And first, the alleged rights of the Indians and Negroes under the royal charter, and laws of England. The provision referred to is substantially the same in both Colony and Province charters, and is in the words following, viz:

"That all and every of the subjects of us, our heirs and successors, which go to and inhabit within our said province and territory, and every of their children which shall happen to be born there, or on the seas in going thither, or returning from thence, shall have and enjoy all liberties and immunities of free and natural subjects within the dominions of us, our heirs and successors, to all intents, constructions, and purposes whatsoever, as if they and every of them were born within our realm of England."

The preamble to the Body of Liberties in 1641, which declares the civil privileges of the inhabitants of the Colony, might also have been referred to in this

line of argument. Still, it is a historical fact that the guaranties of the royal charters, and the Common Law of England as a personal law of privilege, did not extend to Aliens, Negroes, or Indians.¹

The other plea, "that the laws of the province respecting an evil existing, and attempting to mitigate or regulate it did not authorize it," could avail nothing against the other stern historical fact that slavery existed in Massachusetts "by virtue and equity of an express Law of the Country warranting the same, established by a General Court, and sufficiently published; or in case of the defect of a Law in any particular case, by the word of God, . . . to be judged by the General Court." Was it said that the colony-law was annulled with the Charter, by the authority of which it was made? Still the usage had prevailed and acquired force as the common law of the Province. The validity of the judgment against the Charter in 1684, which was denied by the House of Commons, and "questioned by very great authority in England," was never admitted in Massachusetts. 9 *Gray*, 517. There was nothing in the repeal of the Colony charter to affect the private rights of the colonists. *Ibid.*, 518. And generally the rights of the inhabitants, as well as the penalties to which they might be subjected, continued to be determined by the effect and according to the form of the colonial and provincial legislation, i. e. the common law of Massachusetts, rather than by

¹ See Hurd's *Law of Freedom and Bondage in the United States*, Vol. I., pp. 196, 197, 201: a perfect treasure-house of law and history on its subject, for which every student of American History owes him a large debt of gratitude.

the ancient common law of England. 5 *Pickering*, 203. 7 *Cushing*, 76, 77. 13 *Pickering*, 258. 13 *Metcalf*, 68-72.

But whatever may have been the pleas or arguments in these suits, or the opinions which influenced their various results; the fact remains that, although "the bonds of slavery" may have been "loosened" by these proceedings, and "the verdicts of juries in favor of liberty," the legal effect of such verdicts reached none but the parties immediately concerned; and the institution of slavery continued to be recognized by law in Massachusetts, defying all direct attempts to destroy it.

The question however had been raised, and slavery was challenged. Dr. Belknap says, that "the controversy began about the year 1766." *M. H. S. Coll.* I., iv., 201. We shall endeavor to indicate the principal features of its progress in their just relations, without disparagement and without exaggeration.

The town of Worcester, by instructions in 1765, required their representative to "use his influence to obtain a law to put an end to that unchristian and impolitic practice of making slaves of the human species, and that he give his vote for none to serve in His Majesty's Council, who will use their influence against such a law." *Boston News-Letter*, June 4, 1765, quoted by *Buckingham, Newspaper Literature*, I., 31.

The town of Boston, in May, 1766, instructed their Representatives as follows, viz.: "And for the total abolishing of slavery among us, that you move for a law to prohibit the importation and the pur-

chasing of slaves for the future." *Lyman's Report*, 1822.

This action was confirmed by a new vote in the following year. At the Town-Meeting on the 16th of March, 1767, the question came up, as to whether the Town would adhere to that part of its Instructions, and it passed in the affirmative.¹ *Drake's Boston*, 728-9. It is also said, though probably true of a later period only, that "In some of the country towns they voted to have no slaves among them, and that their masters be indemnified from any expence, [after they had granted them freedom] that might arise by reason of their age, infirmities, or inability to support themselves." *Letter of Mr. Thomas Pemberton to Dr. Jeremy Belknap, Boston, Mch. 12, 1795.*

In 1767, an anonymous tract of twenty octavo pages against slavery made its appearance. It was entitled "*Considerations on Slavery, in a Letter to a Friend.*" It was written by Nathaniel Appleton, a merchant of Boston, afterwards a member of the first Committee of Correspondence and a zealous patriot during the Revolutionary struggle. *Appleton Memorial*, 36.

On March 2d, 1769, the reverend Samuel Webster of Salisbury, Massachusetts, published "an earnest address to my country on slavery." An extract is given by Mr. Coffin in his *History of Newbury*, p. 338.

¹ The reader will note the coincidence of this proceeding with that in the Legislature on the same day, when it was "Ordered, that the Matter *subside.*" See *post*, p. 127.

James Swan, "a Scotsman," and merchant in Boston, published "A Dissuasion to Great Britain and the Colonies, from the Slave-Trade to Africa—shewing the Injustice thereof, etc." It seems to have been in "the form of a sermon," and the writer was apparently better satisfied with a second edition revised and abridged, which he put forth in 1773, at the earnest desire of the Negroes in Boston, in order to answer the purpose of sending a copy to each town.

In 1767, the first movement was made in the Legislature to procure the passage of an act against slavery and the slave-trade.

On the 13th March, a bill was brought into the House of Representatives "to prevent the *unwarrantable and unusual* Practice or Custom of inflaving Mankind in this Province, and the importation of slaves into the same." It was read a first time, and the question was moved, whether a second reading be referred to the next session of the General Court? which was passed in the negative. Then it was moved, that a clause be brought into the bill, for a limitation to a certain time, and the question being put, it passed in the affirmative; and it was further ordered, that the bill be read again on the following day, at ten o'clock. *Journal*, 387.

On the 14th, the bill "to prevent the *unwarrantable and unnatural* Practice," etc., was read a second time, and the question was put whether the third reading be referred to the next May session? This passed in the negative, and it was ordered that the Bill be read a third time on Monday next at three o'clock. *Ibid.*, 390.

On the 16th, "The Bill for preventing the *unnatural and unwarrantable* Custom of enslaving Mankind in this Province, and the Importation of Slaves into the Same, was Read according to order, and, after a Debate,

"Ordered that the Matter *subside*, and that Capt. Sheaffe, Col. Richmond, and Col. Bourne, be a Committee to bring in a Bill for laying a Duty of Impoft on Slaves importing into this Province." *Ibid.*, 393.

On the 17th, a Bill for laying a Duty of Impoft upon the Importation of Slaves into this Province was read a first and second time, and ordered for a third reading on the next day at eleven o'clock. *Ibid.*, 408.

On the 18th, "the bill for laying an Impoft on the Importation of Negro and other Slaves, was read a third time, and the question was put, whether the enacting this bill should be referred to the next May session, that the Minds of the Country may be known thereupon? Passed in the Negative. Then the Question was put, Whether a clause shall be bro't in to limit the Continuance of the Act to the Term of one year? Passed in the Affirmative, and Ordered, that the Bill be recommitted." *Ibid.*, 411. In the afternoon of the same day, the bill was read with the amendment, and having passed to be engrossed, was "sent up by Col. Bowers, Col. Gerrish, Col. Leonard, Capt. Thayer, and Col. Richmond." *Ibid.*, 411.

The bill was read a first time in the Council on the 19th of March, and on the 20th was read a second time and passed to be engrossed "as taken into a new draft." On being sent down to the House of Repre-

representatives for concurrence, in the afternoon of the same day, it was "Read and unanimously non-concurred, and the House adhere to their own Vote. Sent up for concurrence." *Ibid. Compare Gen. Court Records, May 1763 to May 1767, p. 485.*

And thus the bill disappeared and was lost. It was the nearest approach to an attempt to abolish slavery, within our knowledge, in all the Colonial and Provincial legislation of Massachusetts. The bills against the importation of slaves cannot justly be regarded as direct attempts to abolish the institution of slavery, whatever may have been the motives which influenced the action concerning them. The bill itself of 1767 has not been found, and it is not unlikely that its provisions may have been less positive and stringent than its title, which is the chief authority for what little anti-slavery reputation it enjoys. Could it be recovered, it might illuminate the record we have given, and throw much light on the subject generally. It is apparent from the record that whatever may have been the height to which the zeal of anti-slavery had carried the agitation of the subject on this occasion, it was duly "ordered, that the Matter subside;"¹ so that it was only an Impost Act which finally tried to struggle forth into existence, and perished in the effort. If indeed it was an attempt at abolition, the failure was so signal and decisive that it was not renewed until ten years afterward, when, as we shall see, it failed again.

¹ The reader will see hereafter, in the frequent use of this parliamentary phrase by the Legislature of Massachusetts, that an order to "*subside*" continued to be their favorite method of reducing anti-slavery inflammation.

That terror of infurrection, so often and aptly illustrated in the common phrase of "sleeping over a volcano," that continuous and awful dread which conscious tyranny feels, but hates to acknowledge, we have already said, was not unknown even in Massachusetts, where the servile class was always a comparatively small element of the population. In times of civil commotion and popular excitement, the danger was more imminent, and the fear was more freely expressed.

During the difficulties between the people of the town of Boston and the British soldiers in 1768, John Wilson, a captain in the 59th Regiment, was accused of exciting the slaves against their masters, assuring them that the soldiers had come to procure their freedom; and that, "with their assistance, they should be able to drive the Liberty Boys to the devil." He was arrested on the complaint of the selectmen, and was bound over for trial; "but, owing to the manoeuvres of the Attorney-General, the indictment was quashed, and Wilson left the Province about the same time." *Drake's Boston*, 754.

There was a similar alarm in September, 1774. It is noticed in one of the letters of Mrs. John Adams to her husband, dated at Boston Garrison, 22d September, 1774.

"There has been in town a conspiracy of the negroes. At present it is kept pretty private, and was discovered by one who endeavored to dissuade them from it. He being threatened with his life, applied to Justice Quincy for protection. They conducted in this way, got an Irishman to draw up a pe-

tition to the Governor [Gage], telling him they would fight for him provided he would arm them, and engage to liberate them if he conquered. And it is said that he attended so much to it, as to consult Percy¹ upon it, and one Lieutenant Small has been very busy and active. There is but little said, and what steps they will take in consequence of it I know not. I wish most sincerely there was not a slave in the province; it always appeared a most iniquitous scheme to me to fight ourselves for what we are daily robbing and plundering from those who have as good a right to freedom as we have. You know my mind upon this subject." *Adams Letters*, I., 24.

In 1771, the subject of the Slave-Trade was again introduced into the Legislature. On the 12th April, in that year, a bill "to prevent the Importation of Slaves from Africa" was read the first time and ordered to a second reading on the following day at ten o'clock. *Journal*, 211. On the 13th, the bill was read the second time, and the further consideration was postponed till the following Tuesday morning. *Ibid.*, 215. On the 16th the bill was re-committed. *Ibid.*, 219.

On the 19th, a "Bill to prevent the Importation of Negro Slaves into this Province" was read the first time and ordered a second reading "to-morrow at eleven o'clock." *Ibid.*, 234. On the 20th, it was "read a second time and ordered to be read again on Monday next, at Three o'clock." On the 22d, it

¹ Brigadier-General the Right Honorable Hugh, Earl Percy, afterwards Duke of Northumberland, was Colonel of the 5th Regiment, or Northumberland Fusiliers, at that time stationed in Boston.

was read the third time, and passed to be engrossed. *Ibid.*, 236. On the 24th, it was read and passed to be enacted. *Ibid.*, 240.

It was duly sent to the Council for concurrence, and on the same day, "James Otis, Esq., came down from the honorable Board, to propose an Amendment on the engrossed bill for preventing the Importation of Slaves from *Africa*, and laid the Bill on the Table;" whereupon "The House took the proposed Amendment into consideration, and concurred with the honorable Board therein, then the Bill was sent up to the honorable Board." *Ibid.*, 242-3.

We have been unable to procure any record of the doings of the Council on the subject, excepting the following entry in the Records of the General Court:

"Wednesday, April 24, 1771, etc. etc. An Engrossed Bill intituled 'An Act to prevent the Importation of Negro Slaves into this Province' having passed the House of Representatives to be Enacted. In Council, Read a third time and passed a concurrence to be enacted."

This act failed to obtain the approval of Governor Hutchinson, and we are fortunately able to present his views on the subject, as communicated to Lord Hillsborough, Secretary of State for the Colonies, in a letter dated May, 1771.

"The Bill which prohibited the importation of Negro Slaves appeared to me to come within his Majesty's Instruction to Sir Francis Bernard, which restrains the Governor from Assenting to any Laws of a new and unusual nature. I doubted besides

whether the chief motive to this Bill which, it is said, was a scruple upon the minds of the People in many parts of the Province of the lawfulness, in a merely moral respect, of so great a restraint of Liberty, was well founded, slavery by the Provincial Laws giving no right to the life of the servant and a slave here considered as a Servant would be who had bound himself for a term of years exceeding the ordinary term of human life, and I do not know that it has been determined he may not have a Property in Goods, notwithstanding he is called a Slave.

“I have reason to think that these three¹ bills will be again offered to me in another Session, I having intimated that I would transmit them to England that I might know his Majesty’s pleasure concerning them.”
27 *Mass. Archives*, 159-60.

These are interesting and important suggestions. It is apparent that at this time there was no special instruction to the royal governor of Massachusetts, forbidding his approval of acts against the slave-trade. Hutchinson evidently doubted the genuineness of the “chief motive” which was alleged to be the inspiration of the bill, the “merely moral” scruple against slavery; but his reasonings furnish a striking illustration of the changes which were going on in public opinion, and the gradual softening of the harsher features of slavery under their influence. The non-importation agreements throughout the Colonies, by which America was trying to thwart the commercial selfishness of her rapacious Mother, had rendered the

¹ The other two bills were a *Marine Corporation Bill* and a *Salem Militia Bill*.

provincial viceroys peculiarly sensitive to the slightest manifestation of a disposition to approach the sacred precincts of those prerogatives by which King and Parliament assumed to bind their distant dependencies : and the “ spirit of non-importation ” which Massachusetts had imperfectly learned from New York was equally offensive to them, whether it interfered with their cherished “ trade with Africa,” or their favorite monopolies elsewhere.

In 1773, the attempt to discourage the slave-trade was renewed. The representatives from Salem had been instructed, May 18, 1773, to use their exertions to prevent the importation of negroes into Massachusetts “ as repugnant to the natural rights of mankind, and highly prejudicial to the Province.” *Felt, Annals*, II., 416. The town of Medford also directed their member to “ use his utmost influence to have a final period put to that most cruel, inhuman and unchristian practice, the slave-trade.” *Swan’s Dissuasion, etc., Revised Ed.*, 1773, p. x. The town of Leicester, May 19, 1773, instructed their representative on this subject, as follows :

“ And, as we have the highest regard for (so as even to revere the name of) liberty, we cannot behold but with the greatest abhorrence any of our fellow creatures in a state of slavery.

“ Therefore we strictly enjoin you to use your utmost influence that a stop may be put to the slave-trade by the inhabitants of this Province; which, we apprehend, may be effected by one of these two ways : either by laying a heavy duty on every negro imported or brought from Africa or elsewhere into this

Province; or, by making a law, that every negro brought or imported as aforesaid should be a free man or woman as soon as they come within the jurisdiction of it; and that every negro child that shall be born in said government after the enacting such law should be free at the same age that the children of white people are; and, from the time of their birth till they are capable of earning their living, to be maintained by the town in which they are born, or at the expense of the Province, as shall appear most reasonable.

“ Thus, by enacting such a law, in process of time will the blacks become free; or, if the Honorable House of Representatives shall think of a more eligible method, we shall be heartily glad of it. But whether you can justly take away or free a negro from his master, who fairly purchased him, and (although illegally; for such is the purchase of any person against their consent, unless it be for a capital offence) which the custom of this country has justified him in, we shall not determine; but hope that unerring Wisdom will direct you in this and in all your other important undertakings.” *Washburn's Leicester*, 442.

The town of Sandwich, in Barnstable County, voted, May 18, 1773, “ that our representative is instructed to endeavor to have an Act passed by the Court, to prevent the importation of *slaves* into this country, and that all children that shall be born of such Africans as are now slaves among us, shall, after such Act, be free at 21 years of age.” *Freeman's History of Cape Cod*, II., 114.

There may have been other towns in which similar

measures were taken to influence the action of the Legislature, but we have no knowledge of any beyond those already noticed. The negroes themselves also began to move in the matter, encouraged by the "spirit of liberty which was rife in the land."

On the 25th June, 1773, in the afternoon session of the House of Representatives, a petition was read "of Felix Holbrook, and others, Negroes, praying that they may be liberated from a State of Bondage, and made Freemen of this Community; and that this Court would give and grant to them some part of the unimproved Lands belonging to the Province, for a Settlement, or relieve them in such other Way as shall seem good and wise upon the Whole." Upon this it was "ordered, that Mr. Hancock, Mr. Greenleaf, Mr. Adams, Capt. Dix, Mr. Paine, Capt. Heath, and Mr. Pickering consider this Petition, and report what may be proper to be done." *Journal*, p. 85.

This "Committee on the Petition of Felix Holbrook, and others, in behalf of themselves and others; praying to be liberated from a State of Slavery, reported" on the 28th June, 1773, P. M., "that the further Consideration of the Petition be referred till next Session," and it was so referred accordingly. *Ibid.*, 94.

Among other indications of the growing interest in the subject, is the fact that at the annual commencement of Harvard College, Cambridge, July 21, 1773, a forensic disputation on the legality of enslaving the Africans was held by two candidates for the bachelor's degree; namely, Theodore Parsons and Eliphalet Pearson, both of whom were natives of Newbury.

The question was "whether the slavery, to which Africans are in this province, by the permission of law, subjected, be agreeable to the law of nature?" The work was published at Boston, the same year, in an octavo pamphlet of forty-eight pages. *Coffin's Newbury*, 339.

The following letter also shows that the business before the Legislature was not wholly neglected or forgotten during the interval between the sessions:

SAMUEL ADAMS TO JOHN PICKERING, JR.

"Boston, Jan^y. 8, 1774.

"Sir,

"As the General Assembly will undoubtedly meet on the 26th of this month, the Negroes whose petition lies on file, and is referred for consideration, are very solicitous for the Event of it, and having been informed that you intended to consider it at your leisure Hours in the Recess of the Court, they earnestly wish you would complete a Plan for their Relief. And in the meantime, if it be not too much Trouble, they ask it as a favor that you would by a Letter enable me to communicate to them the general outlines of your Design. I am, with sincere regard," etc.

On the 26th January, 1774, P.M., "a Petition of a number of Negro Men, which was entered on the Journal of the 25th of June last, and referred for Consideration to this Session," was "read again, together with a Memorial of the same Petitioners and *Ordered*, that Mr. Speaker, Mr. Pickering, Mr. Hancock, Mr.

Adams, Mr. Phillips, Mr. Paine, and Mr. Greenleaf consider the same and report." *Journal*, 104.

All this preliminary preparation resulted at length in "a Bill to prevent the Importation of Negroes and others as Slaves into this Province," which was read the first time on the 2d March, 1774, and ordered to be read again the next day. *Ibid.*, 221. On the 3d, it was read the second time in the morning, and in the afternoon the third time, and passed to be engrossed, when it was sent up to the Council Board for concurrence, by Col. Gerrish, Col. Thayer, Col. Bowers, Mr. Pickering, and Col. Bacon. *Ibid.*, 224. On the 4th March, the bill was returned as "passed in Council with Amendments." *Ibid.*, 226. On the 5th, the House voted to concur with the Council, *ibid.*, 228; and on the 7th, passed the bill to be enacted. *ibid.*, 237. On the 8th, it received the final sanction of the Council, and only required the approval of the Governor to become a law. That approval, however, it failed to obtain; the only reason given in the record being "the Secretary said [on returning the approved bills] that his Excellency had not had time to consider the other Bills that had been laid before him."¹ *Ibid.*, 243. Compare also for Council proceedings, *General Court Records*, xxx., 248, 264.

To this history, derived from the records, we are fortunately able to add a copy of the Bill itself, which is preserved in the *Mass. Archives, Domestic Relations*, 1643-1774, Vol. 9, 457.

¹ The General Court was prorogued March 9th, and dissolved March 30th, 1774. *General Court Records*, xxx., 280-81.

ANNO REGNI REGIS GEORGH TERTII & C DECIMO QUARTO

AN ACT to prevent the importation of Negroes or other Persons as Slaves into this Province; and the purchasing them within the same; and for making provision for relief of the children of such as are already subjected to slavery Negroes Mulattoes & Indians born within this Province.

WHEREAS the Importation of Persons as Slaves into this Province has been found detrimental to the interest of his Majesty's subjects therein; And it being apprehended that the abolition thereof will be beneficial to the Province—

Be it therefore Enacted by the Governor Council and House of Representatives that whosoever shall after the Tenth Day of April next import or bring into this Province by Land or Water any Negro or other Person or Persons whether Male or Female as a Slave or Slaves shall for each and every such Person so imported or brought into this Province forfeit and pay the sum of one hundred Pounds to be recovered by presentment or indictment of a Grand Jury and when so recovered to be to his Majesty for the use of this Government: or by action of debt in any of his Majesty's Courts of Record and in case of such recovery the one moiety thereof to be to his Majesty for the use of this Government the other moiety to the Person or Persons who shall sue for the same.

And be it further Enacted that from and after the Tenth Day of April next any Person or Persons that shall purchase any Negro or other Person or Persons as a Slave or Slaves imported or brought into this Province as aforesaid shall forfeit and pay for every Negro or other Person so purchased Fifty Pounds to be recovered and disposed of in the same way and manner as before directed.

And be it further Enacted that every Person, concerned in importing or bringing into this Province, or purchasing any such Negro or other Person or Persons as aforesaid within the same; who shall be unable, or refuse, to pay the Penalties or forfeitures ordered by this Act; shall for every such offence suffer Twelve months imprisonment without Bail or mainprise.

Provided always that nothing in this act contained shall extend to subject to the Penalties aforesaid the Masters, Mariners, Owners or

Freighters of any such Veffel or Veffels, as before the faid Tenth Day of April next fhall have failed from any Port or Ports in this Province, for any Port or Ports not within this Government, for importing or bringing into this Province any Negro or other Perfon or Perfons as Slaves who in the profecution of the fame voyage may be imported or brought into the fame. *Provided* he fhall not offer them or any of them for fale.

Provided alfo that this act fhall not be conftrued to extend to any fuch Perfon or Perfons, occasionally hereafter coming to refide within this Province, or paffing thro' the fame, who may bring fuch Negro or other Perfon or Perfons as neceffary fervants into this Province provided that the ftay or refidence of fuch Perfon or Perfons fhall not exceed Twelve months or that fuch Perfon or Perfons within faid time fend fuch Negro or other Perfon or Perfons out of this Province there to be and remain, and alfo that during faid Refidence fuch Negro or other Perfon or Perfons fhall not be fold or alienated within the fame.

∇ *And be it further Enacted and declared that nothing in this act contained fhall extend or be conftrued to extend for retaining or holding in perpetual fervitude any Negro or other Perfon or Perfons now inflaved within this Province but that every fuch Negro or other Perfon or Perfons fhall be intituled to all the Benefits fuch Negro or other Perfon or Perfons might by Law have been intituled to, in cafe this act had not been made.*

In the Houfe of Representatives March 2, 1774. Read a firft & fecond Time. March 3, 1774. Read a third Time & paffed to be engroffed. Sent up for Concurrence.

T. CUSHING, *Spkr.*

In Council March 3, 1774. Read a firft Time. 4. Read a fecond Time and paffed a Concurrence to be Engroffed with the Amendment at ∇ dele the whole Clause. Sent down for Concurrence.

THOS. FLUCKER, *Secry.*

In the Houfe of Representatives March 4, 1774. Read and concurred.

T. CUSHING, *Spkr.*

That portion of the title to the bill which we have

italicized is stricken out in the original. We have also retained and italicized the clause which was stricken out by the amendment of the Council. They form a part of the history of the bill, though not of the bill itself as "passed to be enacted."

Such was the response of the Great and General Court of Massachusetts to the petition of her negro-slaves in 1773-4. They prayed that they might be "liberated from a State of Bondage, and made Freemen of the Community; and that this Court would give and grant to them some part of the unimproved Lands belonging to the Province for a Settlement, or relieve them in such other Way as shall seem good and wise upon the Whole." Not one of their prayers was answered. It would seem that an attempt was made to include in the bill, an indirect legislative approval of some of the doctrines maintained by Counsel for the negroes in the "freedom suits;" but even this failed; and a prohibitory act against the importation of slaves was offered to the Governor for his approval, which it was known beforehand could not be obtained.

Whether Hutchinson had actually received an instruction from the Crown on the subject at this time or not, there is no room for doubt as to the general policy of Great Britain. She had aided her colonial offspring to become slaveholders; she had encouraged her merchants in tempting them to acquire slaves; she herself excelled all her competitors in slave-stealing; and from the reign of Queen Anne, the slave-trade was among her most envied and cherished monopolies, its protection and increase being a princi-

pal feature in her commercial policy. The great "distinction" of the Treaty of Utrecht, as the Queen expressly called it, was that the Assiento or Contract for furnishing the Spanish West Indies with Negroes, should be made with England, for the term of thirty years, in the same manner as it had been enjoyed by the French for ten years before. *Queen's Speech, 6 June, 1712.*

This was what her great statesmen and divines of the Church of England were so eager and proud to secure for their country! For all her sacrifices in the war, the millions of treasure she had spent, the blood of her children so prodigally shed, with the glories of Blenheim, of Ramillies, of Oudenarde, and Malplaquet, England found her consolation and reward in seizing and enjoying, as the lion's share¹ of results of the Grand Alliance against the Bourbons, the exclusive right for thirty years of selling African slaves to the Spanish West Indies and the Coast of America! Compare Macknight's *Bolingbroke*, 346-8. Who will wonder that men who had thus been taught to believe "that the Negro-Trade on the Coast of Africa was the chief and fundamental support of the British Colonies and Plantations" in America, should frown upon legislation in the colonies so utterly inconsistent with the interests of British Commerce, or that the

¹ By the articles of the Grand Alliance, England and all the other states subscribing them were pledged neither to enter into any separate treaty with the enemy, nor seek to negotiate for themselves any exceptional privilege to the exclusion of the other members of the Confederacy. Of course this obligation was totally disregarded by England, who insisted on the concession of the Assiento Contract by France and Spain before the proposals for peace were even communicated to the rest of the Allies!

modest efforts of Massachusetts in 1774, should be met by Hutchinson and Gage with the same spirit which, in 1775, dictated the reply of the Earl of Dartmouth to the earnest remonstrance of the Agent of Jamaica against the policy of the government: "We cannot allow the colonies to check or discourage, in any manner, a traffic so beneficial to the nation." *Bridges' Jamaica*, II., 475. *Notes*.

We cannot be accused of belittling the resistance thus presented to any colonial interference with the slave-trade, when we express our regret that the legislative annals of Massachusetts record no attempt to repeal the local laws by which slavery had been established, regulated, and maintained. Such a measure, which should also have granted the relief prayed for by the negroes in their petition, and embodied the wise suggestions of the town of Leicester (*ante*, p. 133), might well have encountered less serious opposition from the servants of the Crown than this twice-rejected non-importation act of 1774.¹

In the brief session of the General Court at Salem, in June, 1774, after Hutchinson's successor, Gage, the last Royal Governor, had commenced his administration, the same bill substantially, for the variations are unimportant, was hurried through the forms of legislation. It was introduced, read a first, second, and third time, and passed to be engrossed on the same day,

¹ The rhetorical flourishes with which Lord Mansfield ornamented his decision in the famous case of *Somerfet* would have furnished an excellent preamble to such an act. The case was well known in Massachusetts, having been reprinted more than once. But the General Court of Massachusetts had no more intention than Lord Mansfield had power to abolish slavery at that period.

10th June. *Journal*, 27. On the 16th, the engrossed bill was read and passed to be enacted. *Ibid.*, 41. In the Council, on the same day, it was read a third time and passed a concurrence to be enacted. *Gen. Court Records*, xxx., 322. On the following day, June 17th, the General Court was dissolved. Like that of which it was a copy, the bill appears "not to have been consented to by the Governor."

The fact is not to be disguised that these efforts were political movements against the government as much as anything else. Sympathy for the slave, and moral scruples against slavery, became less urgent and troublesome after the royal negative had become powerless against the legislation of the people of Massachusetts. The fact that most of the States were slow or relaxed their efforts, after the power came into their hands, and they were "uncontrolled by the action of the Mother Country," would not diminish the credit due to Massachusetts, if she had taken the lead and maintained it. But that honor is not hers! Nor did the separate action of any of the States effectually limit, much less destroy, this infamous traffic.

The Continental Association, adopted and signed by all the members of the Congress on the 20th of October, 1774, for carrying into effect the non-importation, non-consumption, and non-exportation resolve of the 27th of September, provided for the discontinuance of the Slave-Trade. The Continental Congress, on the 6th of April, 1776, formally "*Resolved*, That no slave be imported into any of the thirteen United Colonies." There is reason to be-

lieve that this resolution received the unanimous assent of the Congress. *Force's Dec. of Independence*, p. 42. But no provision was made in the Articles of Confederation to hinder the importation of slaves, and this pernicious commerce was never absolutely crushed until the power of the nation was exercised against it under the authority of the Constitution.

Slavery, however, was not forgotten or neglected for want of notice. In the first Provincial Congress of Massachusetts, October 25, 1774,

“Mr. Wheeler brought into Congress a letter directed to Doct. Appleton, purporting the propriety, that while we are attempting to free ourselves from our present embarrassments, and preserve ourselves from slavery, that we also take into consideration the state and circumstances of the negro slaves in this province. The same was read, and it was moved that a Committee be appointed to take the same into consideration. After some debate thereon, the question was put, whether the matter now subside, and it passed in the affirmative.” *Journals*, 29.

In May, 1775, the Committee of Safety (Hancock and Warren's Committee) came to a formal resolution, which is certainly one of the most significant documents of the period.

“*Resolved*, That it is the opinion of this Committee, as the contest now between Great Britain and the Colonies respects the liberties and privileges of the latter, which the Colonies are determined to maintain, that the admission of any persons, as soldiers, into the army now raising, but only such as are freemen, will be inconsistent with the principles that

are to be supported, and reflect dishonor on this Colony, and that no slaves be admitted into this army upon any consideration whatever.”

This resolution being communicated to the Provincial Congress (June 6, 1775), was read, and ordered to lie on the table for further consideration. It was probably allowed to “subside,” like the former proposition. The prohibition against the admission of slaves into the Massachusetts Army clearly recognizes slavery as an existing institution.

The negroes of Bristol and Worcester having petitioned the Committee of Correspondence of the latter county to assist them in obtaining their freedom, it was resolved, in a Convention held at Worcester, June 14, 1775, “That we abhor the enslaving of any of the human race, and particularly of the negroes in this country, and that whenever there shall be a door opened, or opportunity present for anything to be done towards the emancipation of the negroes, we will use our influence and endeavor that such a thing may be brought about.” *Lincoln's Hist. of Worcester*, 110.

The high tory writers of 1775 were not slow to avail themselves of the argument of inconsistency against the whigs of the day. One writer said:

“Negro slaves in Boston! It cannot be! It is nevertheless very true. For though the Bostonians have grounded their rebellions on the ‘immutable laws of nature,’ and have resolved in their Town Meetings, that ‘It is the first principle in civil society, founded in nature and reason, that no law of society can be binding on any individual, without his consent given by himself

in person, or by his representative of his own free election; yet, notwithstanding the immutable laws of nature, and this public resolution of their own in Town Meetings, they actually have in town two thousand Negroe slaves, who neither by themselves in person, nor by representatives of their own free election ever gave consent to their present state of bondage." *Mein's Sagittarius's Letters*, pp. 38, 39.

On June 5th, 1774, two discourses on liberty were delivered at the North Church in Newburyport, by Nathaniel Niles, M. A.,—which were printed in a pamphlet of sixty pages. A brief passage near the close of the first discourse presents a strong argument against the institution. pp. 37, 38.

In 1774, Deacon Benjamin Colman, of Byfield Church, Newbury, Massachusetts, made himself conspicuous in his neighborhood by his exertions against slavery. In the Essex Journal, of Newburyport, July 20, 1774, an essay of his was published, in which he says:

“And this iniquity is established by law in this province, and although there have been some feeble attempts made to break the yoke and set them at liberty, yet the thing is not effected, but they are still kept under the civil yoke of bondage.” *Coffin's Newbury*, 340.

In the following year, Sept. 16, 1775, the same zealous deacon addressed a letter to a member of the General Court, “by whom (he thought) this idolatry should be thrown down, and a reformation take place by the authority of that legislative power.” His appeals to the love of freedom, which was then the

cry of the whole land, are most forcible, and his strong fears of the further judgments of God as a consequence of this "capital sin of these States," slavery, are full of warning. He concludes with the following paragraph, which is not less interesting in this connection from the special reference to Boston—in his pious improvement of an important fact already set forth in these Notes :

"But, Sir, you may be ready too hastily to conclude from this writing that my mind is so fastened upon the slave-trade, as if it were the only crime that we were chargeable with, or that God was chastening us for. As I have said before, so say I again, our transgressions are multiplied, but yet this crime is more particularly pointed at than any other. WAS BOSTON THE FIRST PORT ON THIS CONTINENT THAT BEGAN THE SLAVE-TRADE, and are they not the first shut up by an oppressive act, and brought almost to desolation, wherefore, Sir, though we may not be peremptory in applying the judgments of God, yet I cannot pass over such providences without a remark. But to conclude. I entreat and beseech you by all the love you have for this town, by all the regard you have for this distressed, bleeding province, as for the American Colonies in general, that you exert yourself, and improve your utmost endeavors at the Court to obtain a discharge for the slaves from their bondage. If this was done, I should expect speedy deliverance to arise to us, but if *this oppression is still continued and maintained by authority*, I can only say, my soul shall weep in secret places for that crime." *Ibid.*, 342.

VII.

IN the autumn of 1776, sympathy for the slave in Massachusetts received a fresh impulse. Two negro men, captured on the high seas, were advertised for sale at auction, as a part of the cargo and appurtenances of a prize duly condemned in the Maritime Court.¹ This advertisement roused the spirit of hostility to slavery to a remarkable degree, and the Legislature were excited to begin the work of reform apparently with great earnestness and vigor.

On Friday, Sept. 13, 1776, at the afternoon session, the Massachusetts House of Representatives

“*Resolved*, That Wednesday next, at three o’clock in the afternoon, be assigned for choosing a committee to be joined with a Committee of the Honorable Board, to take under consideration the condition of the African Slaves, now in this State, or that hereafter may be brought into it, and to report.” *Four. H. of R.*, 105.

We find no record of proceedings in accordance with this resolution until a little more than a month later, when, on the 19th of October, 1776, it was “Ordered, that Mr. Sergeant, Mr. Murrey, Mr. Appleton, and Capt. Stone, with such as the honorable

¹ This was the Hannibal, a sloop of sixty tons, commanded by William Fitzpatrick, and taken while on a voyage from Jamaica to Turk’s Island. *Am. Archives*, v., iii., 258. An advertisement in the *New England Chronicle*, August 15, 1776, announces the Maritime Court for the Middle District to be held at Boston, 5th September, 1776, to try the Justice of the Capture of the Sloop called the Hannibal, etc., and her Cargo and Appurtenances.

House may join be a Committee to take under consideration the condition of the African slaves now in this State [or that may be hereafter brought into this State] or may be hereafter brought into it and report." *Journal H. of R.*, p. 127. This resolution was concurred in by the Council, and William Sever, Benjamin Greenleaf, and Daniel Hopkins, Esqrs., were joined on the part of the Board. *Gen. Court Records*, Vol. xxxiii., p. 55. We have made diligent search for further action under this resolution and appointment of the Committee, but have failed to discover any trace of it. The matter was probably "allowed to subside" again.

On the same day, however, in which the House first determined to give attention to the condition of the African slaves, on the 13th of September, 1776, their resolution to that effect was immediately followed by another "to prevent the sale of two negro men lately brought into this State, as prisoners taken on the high seas, and advertised to be sold at Salem, the 17th inst., by public auction." *Journal*, p. 105. The resolve does not appear on the Journal, but from the files preserved among the Archives of the State, we are enabled to present it as thus originally passed, viz.:

"IN THE HOUSE OF REPRESENTATIVES, SEPT. 13, 1776:

"WHEREAS this House is credibly informed that two negro men lately brought into this State as prisoners taken on the High Seas are advertised to be sold at Salem, the 17th instant, by public auction,

"Resolved, That the selling and enslaving the human species is a

direct violation of the natural rights alike vested in all men by their Creator, and utterly inconsistent with the avowed principles on which this and the other United States have carried their struggle for liberty even to the last appeal, and therefore, that all persons connected with the said negroes be and they hereby are forbidden to sell them or in any manner to treat them otherways than is already ordered for the treatment of prisoners of war taken in the same vessell or others in the like employ and if any sale of the said negroes shall be made, it is hereby declared null and void.

“ Sent up for concurrence,

“ SAML. FREEMAN, *Speaker, P. T.*

“ In Council, Sept. 14, 1776. Read and concurred as taken into a new draught. Sent down for concurrence.

JOHN AVERY, *Dpy. Secy.*

“ In the House of Representatives, Sept. 14, 1776. Read and non-concurred, and the House adhere to their own vote. Sent up for concurrence.

J. WARREN, *Speaker.*

“ In Council, Sept. 16, 1776. Read and concurred as now taken into a new draft. Sent down for concurrence.

JOHN AVERY, *Dpy. Secy.*

“ In the House of Representatives, Sept. 16, 1779. Read and concurred.

J. WARREN, *Speaker.*

“ Consented to.

JER. POWELL,
W. SEVER,
B. GREENLEAF,
CALEB CUSHING,
B. CHADBOURN,
JOHN WHETCOME,
ELDAD TAYLOR,
S. HOLTEN,

JABEZ FISHER,
B. WHITE,
MOSES GILL,
DAN'L. HOPKINS,
BENJ. AUSTIN,
WM. PHILLIPS,
D. SEWALL,
DAN'L HOPKINS.”

We give a more particular account of the legislative history and progress of this resolve, derived from the journals.

The subject reappears on the Journal of the House of the 14th September, as follows :

“David Sewall, Esq., brought down the resolve which passed the House yesterday, forbidding the sale of two negroes, with the following vote of Council thereon, viz. : *In Council*, Sept. 14, 1776. Read and concurred, as taken into a new draught. Sent down for concurrence. Read and non-concurred, and the House adhere to their own vote. Sent up for concurrence.” *Ibid.*, 106.

The members of the Council present on the 14th September, 1776, were

JAMES BOWDOIN,	MOSES GILL,
BENJAMIN GREENLEAF,	BENJAMIN AUSTIN,
RICHARD DERBY,	SAMUEL HOLTEN,
JER. POWELL,	BENJAMIN WHITE,
CALEB CUSHING,	HENRY GARDNER,
BENJAMIN CHADBURN,	JABEZ FISHER,
WILLIAM SEAVER,	WILLIAM PHILLIPS,
JOHN WINTHROP,	DAVID SEWALL,
THOMAS CUSHING,	JOSEPH CUSHING,
ELDAD TAYLOR,	DANIEL HOPKINS.

General Court Records, etc., p. 581.

The Council Minutes, as contained in the *General Court Records*, March 13, 1776—Sept. 18, 1776, pp. 581-2, under the date of September 14th, 1776, give the resolve as finally passed, with the addition, “In Council. Read and concurred. Consented to by the major part of the Council.” This, however, is an error, as appears not only from the entry on the

Journal of the House and the original document from the files as given above, but also from the following minute of the Council in the same volume of Records. Under date of 16th September—the following members of Council being present,

JER. POWELL,	BENJAMIN GREENLEAF,
JOHN WINTHROP,	ELDAD TAYLOR,
JNO. WHETCOMB,	WILLIAM PHILLIPS,
WILLIAM SEAVER,	CALEB CUSHING,
BENJAMIN CHADBURN,	SAMUEL HOLTEN,
JABEZ FISHER,	DAVID SEWALL,—

Rev. Mr. [John] Murray came up with a Message from the House to acquaint the Board that it was their desire to know whether the resolve respecting the sale of Negroes at Salem had passed.

David Sewall, Esq., went down with a message to acquaint the Hon. House that it was under consideration of the Board. *Ibid.*, pp. 585, 589.

On the same day, 16th September, 1776, the final disposition of the matter in the House is thus recorded in their journal.

“John Whitcomb, Esq., brought down the resolve forbidding the sale of two negroes, with the following vote of Council thereon, viz.: *In Council*, Sept. 16, 1776. Read and concurred, as now taken into a new draught. Sent down for concurrence. Read and concurred.” *Ibid.*, 109. The resolve, as finally passed by the General Court, appears in the printed volume of resolves for that period.

“LXXXIII. Resolve forbidding the sale of two Negroes brought in as Prisoners ; Passed September 14, [16th,] 1776.

“ Whereas this Court is credibly informed that two Negro Men lately taken on the High Seas, on board the sloop *Hannibal*, and brought into this State as Prisoners, are advertized to be sold at *Salem*, the 17th instant, by public Auction :

“ *Resolved*, That all Persons concerned with the said Negroes be, and they are hereby forbidden to sell them, or in any manner to treat them otherwise than is already ordered for the Treatment of Prisoners taken in like manner ; and if any Sale of the said Negroes shall be made it is hereby declared null and void ; and that whenever it shall appear that any Negroes are taken on the High Seas and brought as Prisoners into this State, they shall not be allowed to be Sold, nor treated any otherwise than as Prisoners are ordered to be treated who are taken in like Manner.” *Resolves, p. 14.*

The high-toned, bold, and unequivocal declaration of anti-slavery principles, with which it originally set out, is gone ; but it is still the most honorable document of Massachusetts legislation concerning the negro. To appreciate its importance and properly to understand this subject of negro captures and recaptures, it is necessary to extend our inquiry beyond the limits of the legislation of a single Colony ; and we shall therefore make no apology for presenting to the reader in this place the results of our examination of the national legislation and action with reference thereto.

Its practical importance was obvious, and the necessity of an uniform rule was too apparent to admit of a doubt. Accordingly the Continental Congress, on the 14th of October, 1776—just one month after the proceedings in the Legislature of Massachu-

setts concerning the two negroes captured in the Hannibal—appointed a special Committee of three members (Mr. Rich. Henry Lee, Mr. Wilson, and Mr. Hall) “to consider what is to be done with Negroes taken by vessels of war, in the service of the United States.” We have found no report of this Committee, nor are we able to say what action, if any, was taken until a later period of the war.

The Continental Congress, by resolutions of 25th November, 1775, had recommended it to the several Legislatures to erect Courts, or give jurisdiction to the Courts in being, for the purpose of determining concerning captures. Still, from the beginning, Congress exercised the power of controlling, by appeal, the several admiralty jurisdictions of the States. *Journal*, 6th March, 22d May, 1779, 21st March, 24th May, 1780. *Journal H. of R. Pa.*, Jan. 31, 1780.

Congress had prescribed a rule of the distribution of prizes, and an early act of Massachusetts is curiously illustrative of the doctrine of a divided sovereignty. By Chapter XVI. of the laws of 1776, it was provided that distribution should take place according to the Laws of this Colony, when prizes were taken by the Forces or the Inhabitants thereof; and when they shall be taken by the fleet and army of the United Colonies, then to distribute and dispose of them according to the Resolves and Orders of the Congress. *Compare Chapter x.*, 1776, *and Chapter i.*, 1775, p. 9.

Massachusetts ratified the Articles of Confederation in 1778, and the confederation was completed March 1st, 1781. The ninth article gave to the United States in Congress assembled the sole and ex-

clusive right of establishing rules for deciding, in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated, as well as establishing courts for receiving and determining finally appeals in all cases of captures.

Accordingly, Congress proceeded to legislate on the subject, and, during the year 1781, completed an ordinance, ascertaining what captures on water shall be lawful, in pursuance of the powers delegated by the confederation in such cases. On the 4th of June, 1781, an ordinance was reported for establishing a court of appeals, etc. On the 25th of the same month the subject was discussed, and, on the 17th of July, 1781, the ordinance having been further debated, was recommitted, and the committee were instructed to prepare and bring an ordinance for regulating the proceedings of the admiralty courts of the several States in cases of capture, to revise and collect into one body the resolutions of Congress and other convenient rules of decision, and to call upon the several Legislatures to aid by necessary provisions the powers reserved to Congress by the Articles of Confederation on the subject of captures from the enemy. On the 21st of September, 1781, Congress resumed the second reading of the ordinance respecting captures, and on the question to agree to the following paragraph, the yeas and nays were required by Mr. Matthews, of South Carolina: "On the recapture by a citizen of any negro, mulatto, Indian, or other person from whom labor or service is lawfully claimed

by *another citizen*, specific restitution shall be adjudged to the claimant, whether the original capture shall have been made on land or water, a reasonable salvage being paid by the claimant to the recaptor, not exceeding one-fourth part of the value of such labor or service, to be estimated according to the laws of the State *of which the claimant shall be a citizen* : but if the service of such negro, mulatto, Indian or other person, captured below high water mark, shall not be legally claimed *by a citizen of these United States*, he shall be set at liberty."

It was adopted by a vote of twenty ayes to two noes. Both noes were from the South Carolina delegates. By the method of voting in that Congress, the vote was seven States in the affirmative, and one in the negative—four States not voting. The affirmative States were Georgia, Virginia, Maryland, Pennsylvania, New York, Rhode Island, and Massachusetts. States not voting, North Carolina, Delaware, New Jersey, and Connecticut, although all their delegates present voted in the affirmative. On the 27th September, when the ordinance came up for a third reading, an attempt was made to obtain a second vote on this paragraph, but it was ruled to be out of order. The ordinance was farther debated November 8, 13, 30, and some important changes were made, which will appear on comparison of the passages in italics. It was finally passed, apparently without opposition, on the 4th of December, 1781, as follows :

"On the recapture by a citizen of any negro, mulatto, Indian, or other person, from whom labor or service is lawfully claimed *by a State or a citizen of*

a State, specific restitution shall be adjudged to the claimant, whether the original capture shall have been made on land or water, and without regard to the time of possession by the enemy, a reasonable salvage being paid by the claimant to the recaptor, not exceeding 1-4th of the value of such labor or service, to be estimated according to the laws of the State under which the claim shall be made.

“But if the service of such negro, mulatto, Indian, or other person, captured below high water mark, shall not be legally claimed *within a year and a day from the sentence of the Court*, he shall be set at liberty.” Thus the action of the legislative authorities—colonial or state and continental or national—was virtually an affirmation of the received law on the subject, which was founded on the doctrine of *post liminium* derived from the civil law.

This, however, applied only to recaptures. There is no special provision for cases of capture of slaves belonging to the enemy—to whom probably the old doctrine was held to apply, that they were lawful prize, and as such liable to sale for the benefit of the captors. This had been the general, if not universal, rule.

Sir Leoline Jenkins, in a letter written in 1674, respecting negroes in a Dutch prize-vessel, says that it will not be controverted that on the statute of Prize “negroes are to be reputed Goods and merchandizes in this ship, as they are, generally speaking, a part of the commerce of those parts.” *Wynne’s Life of Sir L. Jenkins*, p. 707, quoted by John C. Hurd.

Negroes, captured in Canada, during the wars

between the English and French, were sent to the West India Islands for sale. *Col. Doc.*, x., 131.; *bis*, 138, 140. In 1747, the English having captured a negro servant, the French took pains to reclaim him, but the English refused to surrender him on the ground that *every negro is a slave, wherever he happens to be, and in whatever Country he may reside.* *N. Y. Col. Doc.*, x., 210. This precedent was referred to in a similar case in 1750, with a similar decision, which was *acquiesced in by both English and French.* *Ib.*, 213. See also the 47th article of Capitulation for the Surrender of Canada in 1760. *N. Y. Col. Doc.*, x., 1118.

In 1761, upon the reduction of Martinico, Maj.-Gen. Monckton ordered the negroes which were taken to be sold, and the money to be divided amongst the subalterns attached to his army. *Ibid.*, VIII., 250.

During the American War, the slaves of the rebel colonists were regarded by the English as proper subjects of prize and booty. The *N. E. Chronicle*, July 4, 1776, states that the "negroes carried off when the [British] Army and Fleet were obliged to evacuate the Town and Harbor [of Boston] were sent to Louisburgh, to dig Coal for their Tyrannical Masters. These Blacks, were commanded by a certain Captain Lindsey." It was estimated that not less than 30,000 were carried off from Virginia. *Hildreth*, III., 355. And thousands were carried off from South Carolina, Georgia, and other States. Mr. Jefferson, in his letter to Gordon, refers to those who were sent to the West Indies, and exchanged for rum, sugar, coffee, and fruit. *Works*, II., 427.

In 1779, Sir Henry Clinton issued the following proclamation :

“By his Excellency, Sir HENRY CLINTON, K. B., General, and Commander-in-Chief of all His Majesty's Forces within the Colonies lying on the Atlantic Ocean, from Nova Scotia to West Florida, inclusive, &c., &c., &c. :

“ PROCLAMATION.

“ WHEREAS, The Enemy have adopted a practice of enrolling NEGROES among their troops: I do hereby give Notice, that all NEGROES taken in Arms, or upon any military Duty, shall be purchased for [*the public service at*] a stated price; the Money to be paid to the Captors.

“ But I do most strictly forbid any Person to sell or claim Right over any NEGROE, the Property of a Rebel, who may take refuge with any part of this Army: And I do promise to every NEGROE who shall desert the Rebel Standard full Security to follow within these Lines any occupation which he shall think proper.

“ Given under my Hand, at Head-Quarters,
PHILIPSBURGH, the 30th day of June
1779.

“ H. CLINTON.

“ By his Excellency's Command,
“ JOHN SMITH, Secretary.”

When this proclamation was first issued, the words enclosed within brackets were not in it. They were added in the publication two months later—with a statement that the omission was a mistake of the printers.

This method of dealing with captive negroes was not confined to the British Army at that time.

At the capture of Stony Point by General Wayne, three negroes were taken among the spoils, and although we have not been able to determine what dif-

position was finally made of them, the following letter of General Wayne on the subject is not without interest here. Writing from New Windsor on the 25th July, 1779, to Lieut.-Col. Meigs, he says :

“The wish of the officers to free the three Negroes after a few Years Service meets my most hearty approbation, but as the Chance of War or other Incidents may prevent the officer [owner] from Complying with the Intention of the Officers, it will be proper for the purchaser or purchasers to sign a Condition in the Orderly Book.

“ . . . I would cheerfully join them in their Immediate Manumission—if a few days makes no material difference, I could wish the sale put off until a Consultation may be had, and the opinion of the Officers taken on this Business.” *Dawson's Stony Point*, pp. 111, 118.

The discussions which arose out of the breaches of the Treaty of Peace in 1783, which put negroes on the same footing with any other article of property, and the settlement made by Mr. Jay's Treaty in 1794, furnish an authoritative statement of the prevailing views of public law concerning the status of negroes. Hamilton, in his *Camillus*, No. III., says :

“Negroes, by the law of the States, in which slavery is allowed, are personal property. They, therefore, on the principle of those laws, like horses, cattle, and other moveables, were liable to become booty—and belonged to the enemy [captor] as soon as they came into his hands.” *American Remembrancer*, 1., 57.

Gen. Washington, the Continental Congress, and

the Commissioners appointed by Congress in 1783 to superintend the embarkation of the British from New York, all concurred in this view. Indeed the Commissioners, Egbert Benson, William S. Smith, and Daniel Parker, showed conclusively that they had no hesitation in considering negroes, horses, and other property, as being precisely on the same footing; and selected a claim for a negro as one of the strongest that could be found to enforce a compliance with the stipulation in the Seventh Article of the Treaty. Nor did the British Ministry at any period of the negotiations raise any question as to this doctrine.

The differences of opinion, and the arguments of both parties in the National Congress, only confirm the fact, which indeed is obvious enough from the language of the Article. This was in 1795, during the first session of the fourth Congress, when the House of Representatives embraced many of the ablest men in the country. *Debates on the British Treaty, Part II., pp. 129, 147, 253, 291-2, 301. Papers relative to Great Britain, pp. 5-9.*

After the last war with England similar difficulties and discussions arose with reference to the first article of the Treaty of Ghent, which protected the rights of our citizens in their "slaves or other private property." After a long struggle of the characteristic diplomacy of Great Britain to evade it, a large sum was paid as indemnity for the slaves carried off in violation of the treaty stipulation.

The doctrine of prize in negroes fell only with the Slave-Trade, and the Courts of England were very slow to recognise its fall. As late as 1813, Sir William

Scott condemned one hundred and ninety-nine slaves, as "good and lawful prize to the captors," declaring at the same time that "slaves are deemed *personal property*, and pass to the captors under the words of the Prize Act, 'Goods or Merchandizes.'" 1 *Dodson's Reports*, 263.

The earliest judicial recognition, within our knowledge, of the fact that negroes were no longer to be held and taken as "good and lawful prize to the captors," was in the United States District Court, in South Carolina, in July, 1814. It appears that the question was regarded as new. The Court previously had not proceeded to condemnation of slaves brought in as prize of war; but ordered their confinement as prisoners.¹ And in some cases, they had been received as such by the British authority resident at Charleston. The interest of parties requiring a formal decision on the point of prize, the libel was filed, in this case, *Joseph Almeida, Captain of the American Privateer Caroline, v. Certain Slaves*. Mr. Justice Drayton said he had never had any doubt on the subject, and declared that "Slaves captured in time of war cannot be libelled as prize: nor will the District Court of the United States consider them as prisoners of war. The Court considers the disposition of them as a matter of State, in which the judiciary should not interfere." *Hall's Law Journal*, v., 459.

In view of all these facts, the Massachusetts Resolve of September 16th, 1776, justly challenges our admiration. It lights up the dreary record with a

¹ They were informally considered as prisoners, not so decreed by Court.

sudden and brilliant glare, as of a light shining in great darkness. Although shorn of its magnanimous declaration of principles, in its progress through the legislature, its terms would still introduce a new theory and practice into the law of nations, annihilating the doctrine of prize in negroes, which had been everywhere maintained before, and which continued without question elsewhere. If it was really adhered to, it deserves all the honor that has been claimed for it as a long stride in advance of all the world in civilization and humanity. But the Legislature of Massachusetts could only regulate the action of their own prize Courts and their own citizens, and did not at that time attempt to give law to the whole continent. They then recognized the fact that they could not divest the title of slave-owners in the other Colonies in captured slaves, and their obligation to restore them in cases of recapture. Called upon to deal with a larger number of negroes, under circumstances more embarrassing than in the case already detailed, they appear to have been satisfied with their own declared position, and did not attempt to extend the principle of their new rule to all negro slaves who came or were brought within their jurisdiction.

In the month of June, 1779, the prize-ship, *Victoria*, was brought into the port of Boston. The *Victoria* was a Spanish ship which had cleared from South Carolina for Cadiz. On her passage she was attacked by an English privateer, made a successful resistance, and captured her assailant, who had on board thirty-four negroes which had been taken from the plantations of several gentlemen in South Carolina.

The Spaniard, after taking the negroes on board and injuring the vessel, dismissed her. A few days afterward the ship fell in with and was taken by two British letters of marque and ordered into New York. On her passage there she was recaptured by the Hazard and Tyrannicide, two vessels in the service of Massachusetts, and brought safely into port. On the 21st of June, by order of the Board of War, she was placed in charge of Capt. Johnson, to direct the unloading, etc., in behalf of the State. The Board of War immediately represented to the Legislature the facts relating to the negroes thus "taken on the high seas and brought into the State;" being evidently unable to apply the resolution of 1776 to this case.

On the 23d of June, 1779, it was ordered in the House of Representatives, "that Gen. Lovell, Capt. Adams, and Mr. Cranch be a committee to consider what is proper to be done with a number of negroes brought into port in the prize ship called the Lady Gage."¹ *Journal*, p. 60. The next day, "the committee appointed to take into consideration the state and circumstances of a number of negroes lately brought into the port of Boston, reported a resolve directing the Board of War to inform our delegates in Congress of the state of facts relative to them, to put them into the barracks on Castle Island, and cause them to be supplied and employed." *Ibid.*, pp. 63, 64. The resolution was immediately passed and concurred in by the Council. It appears in the printed volume, among the Resolves of June, 1779.

¹ This name of "Lady Gage" is probably a mistake, for this proceeding evidently led to the resolution of the following day.

“CLXXX. Resolve on the Representation of the Board of War respecting a number of negroes captured and brought into this State. Passed June 24, 1779.

“On the representation made to this Court by the Board of War, respecting a number of negroes brought into the Port of Boston, on board the Prize Ship *Victoria* :

“*Resolved*, that the Board of War be and they are hereby directed forthwith to write to our Delegates in Congress, informing them of the State of Facts relating to said Negroes, requesting them to give information thereof to the Delegates from the State of *South Carolina*, that so proper measures may be taken for the return of said Negroes, agreeable to their desire.

“And it is further *Resolved*, that the Board of War be and they hereby are directed to put the said Negroes, in the mean time, into the barracks on Castle Island in the Harbor of Boston, and cause them to be supplied with such Provision and Clothing as shall be necessary for their comfortable support, putting them under the care and direction of some Prudent person or Persons, whose business it shall be to see that the able-bodied men may be usefully employed during their stay in carrying on the Fortifications on said Island, or elsewhere within the said Harbor; and that the Women be employed according to their ability in Cooking, Washing, etc. And that the said Board of War keep an exact Account of their Expenditures in supporting said Negroes.” *Resolves*, p. 51.

This resolve was immediately carried into execution. On the 28th of June, Edward Revely, the prize-master, was ordered to “deliver Thos. Knox from ship *Victoria* the Negroes that are on board for the purpose of their being sent to Castle Island pr. Order of Court,” and accordingly there were “34 Negroes delivered.” At the same time, the Board of War ordered the “issue to the Negroes at Castle Island—1 lb. of Beef, 1 lb. of Rice pr. day,” upon the orders of Lt.-Col. Revere, the commandant of Castle

Island. *Minutes Board of War*. His letter of instructions from the Board is as follows :

“ War Office, 28 June, 1779.

“ Lt.-Col. Revere,

“ Agreeable to a Resolve of Court we fend to Castle Island and place under your care the following Negroes, viz. :

[19] Men,
[10] Women,
[5] Children,

lately brought into this Port in the Spanish retaken Ship *Victoria*. The Men are to be employed on the Fortifications there or elfewhere in the Harbor, in the moft useful manner, and the Women and Children, according to their ability, in Cooking, Washing, etc. They are to be allowed for their fubfiftence One lb. of Beef, and one lb. of Rice per day each, which Comiffary Salifbury will furnifh upon your order, and this to continue until our further orders.

“ By Order of the Board.”

In accordance with the refolve of Court, the Board of War, by their Prefident, Samuel P. Savage, ad-dreffed a letter to Meffrs. Gerry, Lovell, Holten, etc., etc., delegates from Maffachufetts in the Continental Congress, dated War Office, 29th June, 1779, in which are fet forth the principal facts in the cafe, and the instructions of the Legislature. In conclufion, the Prefident fays, “ Every neceffary for the speedy difcharge of thefe people, we have no doubt you will take, that as much expenfe as poffible may be faved

to those who call themselves their owners." This letter also gives the number of the negroes, and the names of the several gentlemen from whose plantations they were taken, viz.:

"5 Men 4 Women 4 Boys 1 Girl belonging to Mr. Wm. Vryne.

"9 Men 1 Woman belonging to Mr. Anthony Pawley.

"1 Man belonging to Mr. Thomas Todd.

"2 Men 3 Women belonging to Mr. Henry Lewis.

"2 Men 2 Women belonging to Mr. William Pawley.

"One of the negroes is an elderly sensible man, calls himself James, and says he is free, which we have no reason to doubt the truth of. He also says that he with the rest of the Negroes were taken from a place called Georgetown." *Mass. Archives, Vol. 151, 292-94.*

These negroes were not all detained at Castle Island, until their owners were heard from. One method of providing for them is noticed in the following extract:

"In 1779, Col. Paul Revere, who commanded there [Castle Island] had several orders from the Council to let part of them [negroes quartered on the Island] live as servants, with persons in different towns. An express condition of such license was, they should be returned whenever the public authorities required." *Felt: Coll. Am. Stat. Assoc., 1, 206-7.*

These orders of the Council began as soon as the negroes were sent to the Island, the first one we have

found bearing date June 30th, 1779, by which Mr. Joshua Brackett was to have a Negro Boy "such as he may choofe," etc. *Mafs. Archives, Vol. 175, 374.* See also fimilar order for three Negro Boys to be delivered to Hon. Henry Gardner, July 5, 1779. *Ibid., 385.*

Most of them, however, must have remained at Castle Island, as appears from a return of the negroes there, October 12th, 1779. It is a singular circumstance that such a return should be made, apparently to the Legislature, with a brief and touching report, from John Hancock—one of the most interesting documents connected with this subject. The original, from which we copy, is in the *Mafs. Archives, Vol. 142, 170.* The portions which are in *italics* are in the autograph of Hancock.

BOSTON, Oct. 12, 1779. A Return of y^e Negroes at Castle Island,
Viz. :

Negro Men.

1. ANTHONY.	9. JACK.
2. PARTRICK.	10. GYE.
3. PADDE.	11. JUNE.
4. ISAAC.	12. RHODICK.
5. QUASH.	13. JACK.
6. BOBB.	14. FULLER.
7. ANTHONEY	15. LEWIS.
8. ADAM.	

The above men are stout fellows.

Negro Boys.

- No. 1. SMART.
2. RICHARD.

Boys very small.

Negro Woomen.

- No. 1. KITTEY.
 2. LUCY.
 3. MILLEY.
 4. LANDER.
- Pretty large.*

Negro Girls.

- No. 1. LYSETT.
 2. SALLY.
 3. MERCY.
- Rather stout.*

Gentlemen,

The Scituation of these Negroes is pitiable with respect to Cloathing.

I am, Gent.

Your very hum. Serv^t.

John Hancock.¹

Oct. 12, 1779.

On the 15th of November, 1779, a petition was read in the Council, from Isaac Smith, John Codman, and William Smith, in behalf of William Vereen and others, of the State of South Carolina, then in Boston, praying that a number of Negroes which were taken from them by a British privateer, and retaken by two armed vessels belonging to Massachusetts, might be delivered to them. The Council, upon hearing the petition, ordered "that Moses Gill, Esq., with such as the Honorable House shall join, be a Committee to take into consideration this petition, and report what may be proper to be done thereon." The resolution was immediately sent to the House, who concurred, and joined Capt. Williams of Salem, and Mr. Davis of Boston, for the Committee.

On the 17th of November, another petition was presented in Council, from John Winthrop, "pray-

¹ John Hancock had been appointed "Captain of the Castle and Fort on Governor's Island," on the 6th of October, 1779. *Resolves*, CLXXVIII, p. 111. *Compare Journal*, pp. 54, 60.

ing that certain negroes, who were brought into this State by the *Hazard* and *Tyrannicide*, may be delivered to him." This petition was also committed to the "committee appointed on the petition of Isaac Smith and others," by a concurrent vote of both Houses.

On the 18th of November, "Jabez Fisher, Esq., brought down a report of the Committee of both Houses on the petition of Isaac Smith, being by way of resolve, directing the Board of War to deliver so many of the negroes therein mentioned, as are now alive. Passed in Council, and sent down for concurrence." The order of the House is, "Read and concurred, as taken into a new draught." Sent up for concurrence."

It is printed among the resolves of November, 1779.

"XXXI. Resolve relinquishing this State's claim to a number of Negroes, passed November 18, 1779.

"Whereas a number of negroes were re-captured and brought into this State by the armed vessels *Hazard* and *Tyrannicide*, and have since been supported at the expense of this State, and as the original owners of said Negroes now apply for them :

"Therefore *Resolved*, That this Court hereby relinquish and give up any claim they may have upon the said owners for re-capturing said negroes : Provided they pay to the Board of War of this State the expense that has arisen for the support and cloathing of the Negroes aforesaid." *Resolves*, p. 131.¹

The Massachusetts act of April 12, 1780, more effectually providing for the security, support, and exchange of prisoners of war brought into the State,

¹ The original resolve is in *Mass. Archives*, Vol. 142, 29, and is endorsed "Negroes captured in the ship *Victoria*," and "Entered page 454."

was passed in accordance with the Resolutions of Congress, adopted January 13th, 1780. *Laws, 1780, Chap. v., pp. 283, 4.* It declares with reference to "all Prisoners of War, whether captured by the Army or Navy of the United States, or armed Ships or Vessels of any of the United States, or by the Subjects, Troops, Ships, or Vessels of War of this State, and brought into the same, or cast on shore by shipwreck on the coast thereof , all such prisoners, so brought in or cast on shore (including Indians, Negroes, and Molatoes) be treated in all respects as prisoners of war to the United States, any law or resolve of this Court to the contrary notwithstanding." A previous law of 1777, repealed by this act, contained no special provision concerning this class of captures. *Laws, 1777, Chap. xxxv., p. 114.*

On Friday, the 23d of January, 1784, Governor Hancock sent a message to the Legislature, transmitting papers received during the recess from October 28th, 1783, to January 21st, 1784, "among which (he says) is one from his Excellency the Governor of South Carolina, respecting the detention of some Negroes here, belonging to the subjects of that State. I have communicated it to the Judges of the Supreme Judicial Court—their observations upon it are with the Papers. I have made no reply to the letter, judging it best to have your decision upon it." *Journal H. of R., Vol. iv., pp. 308, 9.* The Secretary, in communicating the message to the House, said he had laid the papers before the Senate, with his Excellency's request to send them to the House. *Ibid., p. 310.*

On the same day, in the Senate, the message was read with accompanying papers, and referred to a joint committee of both Houses. *Senate Journal*, iv., 277. *House Journal*, iv., 311.

On the 23d of March following, a report of the committee, "by way of order," was read and accepted in the Senate, and concurred in by the House. *Senate Journal*, iv., 441. In the House, "The Hon. Mr. Warner brought down the report of the Committee on Governor Gerrard's¹ letter, being an Order requesting his Excellency the Governor to transmit a copy of the opinions of the Judges of the Supreme Judicial Court on the case complained of, for the information of the said Governor Gerrard." *House Journal*, iv., 496. The order is printed among the Resolves, March, 1784.

"CLXXI. Order requesting the Governor to write to Governor *Guerard* of *South Carolina*, inclosing the letter of the Judges of the Supreme Judicial Court, March 23d, 1784.

"*Ordered*, that his Excellency the Governor be requested to write to Excellency *Benjamin Guerard*, Governor of *South Carolina*, inclosing for the information of Governor *Guerard*, the letter of the Judges of the Supreme Judicial Court of this Commonwealth, with the copy in the said letter referred to, upon the subject of Governor *Guerard's* letter, dated the sixth October, 1783." p. 141.

¹ Benjamin Guerard was Governor of the State of South Carolina from 1783 to 1785.

We have made diligent efforts to find the papers referred to among the files preserved in the State-House at Boston, but without success. We have also endeavored to procure them from the Archives of the State of South Carolina, with no more satisfactory result. Fortunately, however, we have been favored with the following extracts and memorandum, which were made by Mr. Bancroft at Columbia, S. C., several years ago.

From Mr. Bancroft's MSS., America, 1783, Vol. II.

GOVERNOR GUERARD TO GOVERNOR HANCOCK,
6th October, 1783.

EXTRACT. "That such adoption is favoring rather of the Tyranny of Great Britain which occasioned her the loss of these States—that no act of British Tyranny could exceed the encouraging the negroes from the State owning them to desert their owners to be emancipated—that it seems arbitrary and domination—assuming for the Judicial Department of any one State, to prevent a restoration voted by the Legislature and ordained by Congress. That the liberation of our negroes disclosed a specimen of Puritanism I should not have expected from gentlemen of my Profession."

MEMORANDUM. "He had demanded fugitives, carried off by the British, captured by the North, and not given up by the interference of the Judiciary." "Governor Hancock referred the subject to the Judges."

JUDGES CUSHING AND SARGENT TO GOVERNOR
HANCOCK, Boston, Dec. 20, 1783.

EXTRACT. "How this determination is an attack upon the spirit, freedom, dignity, independence, and sovereignty of South Carolina, we are unable to conceive. That this has any connection with, or relation to Puritanism, we believe is above y^r Excellency's comprehension as it is above ours. We should be sincerely sorry to do anything inconsistent with the Union of the States, which is and must continue to be the basis of our Liberties and Independence; on the contrary we wish it may be strengthened, confirmed, and endure for ever."

Whether Governor Hancock recognized in the subjects of this correspondence any of his old Castle Island acquaintances, does not appear; but we entertain no doubt that they were the same, or a part of the same negroes whose "pitiable" condition "with respect to cloathing," he had reported to the authorities in October, 1779. Why or how it happened that any of them were still within the jurisdiction of Massachusetts, we cannot explain. The exigencies of the war in South Carolina, which was threatened or invaded and overrun during the greater part of the intervening period (1779-83), may have prevented some of the owners from prosecuting promptly their intention to reclaim their slaves or returning with them to that State. The slaves themselves may have become familiar with their new homes, and willing or desirous to remain with their new masters in the various towns

to which they had been scattered, and where they had been permitted to live under the orders of Council, and their new masters may have become warmly interested in the desire to keep them. Under such circumstances the authorities may have found it difficult to obtain a compliance with the agreement to return them when called for, without enforcing the reclamation in the courts of law. Add to all this, the disposition of some of the Supreme Court judges "to substitute an unwritten higher law, interpreted by individual conscience, for the law of the land and the decrees of human tribunals"—and we shall not be surprised at the result indicated in these imperfect memorials of the proceedings in 1783, '84.

We may expect from future researches in Massachusetts more light on this as well as other points indicated in these Notes; and we trust especially that these deficiencies may "compel a discovery" of the opinions of the Judges. They would furnish an extremely important illustration of the state and progress of anti-slavery ideas in 1783, bearing directly on the construction of the Constitution of 1780, which we have still to discuss. The only additional item we have found which may bear on this case is the following:

In the Supreme Judicial Court of the Commonwealth of Massachusetts, Suffolk, 26th August, 1783, the following named negroes were brought up on habeas corpus and discharged, the Court declaring the mittimus insufficient to hold them.

Affa Hall, wife of Prince Hall,
Quash, Robert,

John Polly,	Anthony,
Jack Phillips,	Peggy, wife of said An-
George Polly,	thony.

Records, 1783, fol. 177, 178.

VIII.

WE return again to trace the progress of public opinion on slavery in Massachusetts during the Revolution. It is indicated in part by the public press of the time. William Gordon, afterward well known as the author of a history of the Revolution, was very busy as a writer on this and kindred topics. In Letter V (of a series), dated Roxbury, September 21, 1776, he says:

“ The Virginians begin their Declaration of Rights with saying, ‘ that *all* men are born equally free and independent, and have certain inherent natural rights, of which they cannot, by any compact, deprive themselves or their posterity ; among which are the enjoyment of life and *liberty*.’ The Congress declare that they ‘ hold these truths to be self-evident, that all men are created *equal*, that they are endowed by their Creator with certain *unalienable rights*, that among these are life, *liberty* and pursuit of happiness.’ The Continent has rang with affirmations of the like import. If these, Gentlemen, are our genuine sentiments, and we are not provoking the Deity, by acting hypocritically to serve a turn, let us apply earnestly and heartily to the extirpation of slavery from among ourselves. Let the State allow of nothing beyond servi-

tude for a stipulated number of years, and that only for seven or eight, when persons are of age, or till they are of age: and let the descendants of the Africans born among us, be viewed as free-born; and be wholly at their own disposal when one-and-twenty, the latter part of which age will compensate for the expense of infancy, education, and so on.¹”

In the Independent Chronicle, November 14, 1776, there is a Plan for the gradual extermination of slavery out of the Colony of Connecticut. It was sent to the publishers by Dr. Gordon, from Roxbury, Nov. 2, 1776. This plan is very severe on slaveholders, and portraying the death-bed scene of one of them, raises the query, whether he is sinner or saint? Gordon himself says, “I shall say nothing further of the plan, than that, tho’ I am well pleased, to have the absurdity of perpetuating slavery exposed, I am not for unfainting every man that through the power of prevailing prejudice and custom, is chargeable with inconsistency and absurdity: for if so, who then can be saved?”

A “Son of Liberty” writes vigorously against slavery in the Independent Chronicle, November 28, 1776. He calls loudly for legislation, etc., “that no laws be in existence contrary to sound reason and revelation.”

At this period, advertisements of slave-property were common in the newspapers. We quote a few specimens:

¹ The methods proposed in this letter do not give any countenance to the modern theories that slavery was illegal, and that hereditary slavery was always contrary to law in Massachusetts.

From the Independent Chronicle, October 3, 1776.

“ *To be SOLD* A stout, hearty, likely NEGRO GIRL, fit for either Town or Country. Inquire of Mr. Andrew Gillespie, Dorchester, Octo. 1., 1776.”

From the same, October 10.

“ A hearty NEGRO MAN, with a small sum of Money to be given away.”

From the same, November 28.

“ *To SELL*—A Hearty likely NEGRO WENCH about 12 or 13 Years of Age, has had the Small Pox, can wash, iron, card, and spin, etc., for no other Fault but for want of Employ.”

From the same, February 27, 1777.

“ *WANTED* a NEGRO GIRL between 12 and 20 Years of Age, for which a good Price will be given, if she can be recommended.”

From the Continental Journal, April 3, 1777.

“ *To be SOLD*, a likely NEGRO MAN, twenty-two years old, has had the small-pox, can do any sort of business; sold for want of employment.”

“ *To be SOLD*, a large, commodious Dwelling House, Barn, and Outhouses, with any quantity of land from 1 to 50 acres, as the Purchaser shall choose within 5 miles of Boston. Also a smart well-tempered NEGRO BOY of 14 years old, not to go out of this State and *sold for 15 years only, if he continues to behave well.*”

From the Independent Chronicle, May 8, 1777.

“ *To be SOLD*, for want of employ, a likely strong NEGRO GIRL, about 18 years old, understands all sorts of household business, and can be well recommended.”

These and similar advertisements drew forth the following communication to the Printers from Dr. Gordon ; but without any immediate effect, if we may judge from the fact that the last advertisement above was continued in the same paper in which was published

MR. GORDON'S HINT ON SLAVERY.

Independent Chronicle, May 15, 1777.

“ Messieurs Printers,

“ I WOULD hope that you are the Sons of Liberty from principle, and not merely from interest, wish you therefore to be consistent, and never more to admit the sale of negroes, whether boys or girls, to be advertised in your papers. Such advertisements in the present season are peculiarly shocking. The multiplicity of business that hath been before the General Court may apologize for their not having attended to the case of slaves, but it is to be hoped that they will have an opportunity hereafter, and will, by an Act of the State, put a final stop to the public and private sale of them, which may be some help towards eradicating slavery from among us. If God hath made of one blood, all nations of men, for to dwell on all the face of the earth, I can see no reason why a black rather than a white man should be a slave.

“ Your humble Servant,

“ WILLIAM GORDON.

“ N. B. I mean the above as a hint also to the other printers.”

But although the Boston newspapers still continued to advertise slave-property, and, as we shall hereafter

see, in a manner even more shocking to the modern reader, it is to this period we are to refer the last attempt in the Legislature to put an end to slavery in Massachusetts. It is the most emphatic, if indeed it is not the only direct, attack made on that institution in all their legislation. The Legislature were also at this time beginning their first essay at constitution-making—the establishment of a new system of government for the State. The failure of this attack on slavery was as signal and complete as possible, while the method by which it was accomplished presents a curious illustration of the growth of the sentiment and principle of nationality. It is not amiss to remember, that in the first and last and only direct and formal attempt to abolish slavery in Massachusetts, the popular branch of the Legislature of that State laid the bill for that purpose on the table, with a direction “that application be made to Congress on the subject thereof.”

On the 18th of March, 1777, another petition of Massachusetts slaves was presented to the Legislature, as appears from the following entry on the Journal of that date :

“A petition of Lancaster Hill, and a number of other negroes, praying the Court to take into consideration their state of bondage, and pass an act whereby they may be restored to the enjoyment of that freedom which is the natural right of all men. Read and committed to Judge Sergeant, Mr. Dalton, Mr. Appleton, Col. Brooks, and Mr. Story.”

The original petition is preserved among the Archives of Massachusetts, and furnishes some addi-

tional interesting particulars. They pray for the passage of an act, "whereby they may be restored to the enjoyment of that freedom, which is the natural right of all men, and *their children (who were born in this land of liberty) may not be held as slaves after they arrive at the age of twenty-one years.*" The petition is signed by Lancaster Hill, Peter Bess, Brister Slenfen, Prince Hall, Jack Pierpont (his × mark), Nero Funelo (his × mark), and Newport Sumner (his × mark). It bears date January 13th, 1777, and has the following endorsement: "Mar. 18. Judge Sergeant, Mr. Dalton, Mr. Appleton, Coll. Brooks, Mr. Story, Mr. Lowell and to consider y^e matter at large Mr. Davis." *Mass. Archives, Revolutionary Resolves, Vol. VII., p. 132.*

The addition of "Mr. Lowell and to consider y^e matter at large Mr. Davis" indicates further proceedings, which we are unable to give, in consequence of the deficiencies in all the copies of the Journals known to us. The action of the Legislature, however, resulted in a bill, which was probably drawn by Judge Sargent, who was the first named of this committee.

On Monday afternoon, June 9th, 1777, "a Bill entitled an Act for preventing the Practice of holding persons in Slavery" was "read a first time, and ordered to be read again on Friday next, at 10 o'clock, A. M." *Journ., 19.* On the 13th, the bill was "read a second time, and after Debate thereon, it was moved and seconded, That the same lie upon the Table, and that Application be made to Congress on the subject thereof; and the Question being put, it passed in the Affirmative, and Mr. Speaker, Mr.

Wendell, and Col. Orne, were appointed a Committee to prepare a letter to Congress accordingly, and report." *Journ.*, 25. On the following day, Saturday, June 14th, "the Committee appointed to prepare a Letter to Congress, on the subject of the Bill for preventing the Practice of holding Persons in Slavery, reported." Their report was "Read and Ordered to lie." *Journ.*, 25. We find no further trace of it.

"STATE OF MASSACHUSETTS BAY. IN THE YEAR OF OUR LORD, 1777.

"An act for preventing the practice of holding persons in Slavery.

"WHEREAS, the practice of holding Africans and the children born of them, or any other persons, in Slavery, is unjustifiable in a civil government, at a time when they are asserting their natural freedom; wherefore, for preventing such a practice for the future, and establishing to every person residing within the State the invaluable blessing of liberty.

"*Be it Enacted*, by the Council and House of Representatives, in General Court assembled, and by the authority of the same,—That all persons, whether black or of other complexion, above 21 years of age, now held in Slavery, shall, from and after the day of

next, be free from any subjection to any master or mistress, who have claimed their servitude by right of purchase, heirship, free gift, or otherwise, and they are hereby entitled to all the freedom, rights, privileges and immunities that do, or ought of right to belong to any of the subjects of this State, any usage or custom to the contrary notwithstanding.

"*And be it Enacted*, by the authority aforesaid, that all written deeds, bargains, sales or conveyances, or contracts without writing, whatsoever, for conveying or transferring any property in any person, or to the service and labor of any person whatsoever, of more than twenty-one years of age, to a third person, except by order of some court of record for some crime, that has been, or hereafter shall be made, or by their own voluntary contract for a term not exceeding seven years, shall be and hereby are declared null and void.

"And WHEREAS, divers persons now have in their service negroes,

mulattoes or others who have been deemed their slaves or property, and who are now incapable of earning their living by reason of age or infirmities, and may be desirous of continuing in the service of their masters or mistresses,—*be it therefore Enacted*, by the authority aforesaid, that whatever negro or mulatto, who shall be desirous of continuing in the service of his master or mistress, and shall voluntarily declare the same before two justices of the County in which said master or mistress resides, shall have a right to continue in the service, and to a maintenance from their master or mistress, and if they are incapable of earning their living, shall be supported by the said master or mistress, or their heirs, during the lives of said servants, anything in this act to the contrary notwithstanding.

“*Provided*, nevertheless, that nothing in this act shall be understood to prevent any master of a vessel or other person from bringing into this State any persons, not Africans, from any other part of the world, except the United States of America, and selling their service for a term of time not exceeding five years, if twenty-one years of age, or, if under twenty-one, not exceeding the time when he or she so brought into the State shall be twenty-six years of age, to pay for and in consideration of the transportation and other charges said master of vessel or other person may have been at, agreeable to contracts made with the persons so transported, or their parents or guardians in their behalf, before they are brought from their own country.” *Mass. Archives: Revolutionary Resolves, Vol. vii., p. 133.*

An endorsement on the bill is, “Ordered to lie till the second Wednesday of the next Session of the General Court.” It was not taken up at that time, nor at any other time that we can discover.

We have said that Judge Sargent was probably the author of this bill. He was a very strong advocate of anti-slavery doctrines, and subsequently, in his career as a Judge of the Supreme Court, had a principal agency in accomplishing the overthrow of slavery by judicial construction, without the aid of legislation in which he had failed.

There is among the archives of Massachusetts the following draft of a bill, evidently the original of the preceding act, which appears to have been written by Judge Sargent on the back of a note addressed to him by Rev. Dr. Eliot, an eminent minister of Boston who took a very prominent part in the patriotic proceedings of the Revolutionary period.

“IN Y^e YEAR OF OUR LORD 1777.

“AN ACT for preventing y^e wicked & unnatural Practice of holding Persons in Slavery.

“WHEREAS y^e unnatural practice in this state of holding certain Persons in Slavery, more particularly those transported from Africa & y^e children born of such persons, is contrary to y^e laws of Nature, a scandal to professors of y^e Religion of Jesus, & a disgrace to all good Governments, more especially to such who are struggling against Oppression & in favour of y^e natural & unalienable Rights of human nature—

“Wherefore in some measure to secure the blessings of freedom to such who shall be hereafter born within this State—

“*Be it Enacted* by y^e Council & House of Representatives in general court assembled & by y^e authority of y^e same that all persons who shall be born within y^e limits of this state from & after y^e day of next whether their parents be black or white, or esteemed Bond or free, of whatsoever nation, People or condition, such persons born as afores'd shall be & hereby are intitled to all y^e freedom, Rights, Liberties, privileges & immunities that do or of right ought to belong unto free & natural born subjects of this State, any usage or custom to y^e contrary notwithstanding—

“And for y^e effectual preventing of y^e unnatural practice of selling promiscuously and transferring a property in our fellow creatures, disgraceful to human nature, & a scandal to professing christians—Therefore *Be it Enacted* by y^e authority aforesaid that all bargains, sales, conveyances & other writings or contract without writing whatsoever for y^e conveying or transferring of any property in our fellow creatures or of y^e labour or service of any persons whatsoever of more than

twenty-one years of age to a third person other than of such person who shall voluntarily make himself a party to such Instruments or writings or where he shall be subjected to such sale, or service by virtue of y^e order of some court of Record, made after y^e day of next shall be null & void to all intents, constructions & purposes whatsoever, any Law, Usage or custom to y^e contrary in any wise notwithstanding." *Mass. Archives: Vol. 142, 58.*

On the 11th of September, 1777, a petition was read in the House of Representatives, from the selectmen of the town of Woburn, praying an abatement of their quota of men for the Continental Army, for *Slaves, Idiots, Infane, Captives, &c.*, and those under age. The petitioners had leave to withdraw their petition.

A trace of the exercise of private judgment and one phase of public opinion soon afterwards, on this subject, may be seen in the following extract from the Journal of the House of Representatives, 24th September, 1777:

"A Petition of Joseph Prout of Scarborough, setting forth that Mr. William Vaughan lately told his two Negroes that by an Act of Court all Negroes were made free, in consequence whereof they have since left him, and one of them has hired himself to said Vaughan, who withholds him from the Petitioner, therefore praying relief. Read and dismissed." *p. 86.*

As the efforts towards the formation of a State Constitution gradually strengthened and took shape, the subject of slavery and the status of the negro came up again and again. There was a conflict of opinions and interests, and the newspapers of the day bear witness to its progress. The friends of the negro did

not by any means have it all their own way. The muses were invoked on both sides. In the Independent Chronicle of the 29th Jan., 1778, nearly a column of the paper is occupied with about one hundred lines of verse ridiculing negro equality, which was responded to by another production in verse in the paper of the 12th February. This brought out a rejoinder, also in verse, in the following week, Feb. 19th, 1778.

The discussion was not confined to these poetical champions. As early as the 8th of January, 1778, Doctor Gordon took up one phase of the business with an article in the Independent Chronicle, in which he said:

“Would it not be ridiculous, inconsistent and unjust, to exclude *freemen* from voting for representatives and senators, though otherwise qualified, because their skins are black, tawny or reddish? Why not disqualified for being long-nosed, short-faced, or higher or lower than five feet nine? A black, tawny or reddish skin is not so unfavorable an hue to the genuine son of liberty, as a tory complexion. Has any other State disqualified freemen for the color of their skin? I do not recollect any; and if not, the disqualification militates with the proposal in the Confederation, that the free inhabitants of each State shall, upon removing into any other State, enjoy all the privileges and immunities belonging to the free citizens of such State.”

With regard to the proceedings of the Legislature-Convention of 1777-1778, little is known; but the draft of a Constitution was prepared, which was debated at length, approved by the Convention, presented to the Legislature, and submitted to the people,

by whom it was rejected. *Barry: History of Mass.*, II., 175.

We have been fortunate enough to recover a fragment of the debates in the Convention, which bears on our subject. It shows that there was a continued contest in that body between those who supported and those who opposed negro equality, in which the latter carried the day; and also that it was after debate—not unconsciously or without notice—that a majority of the Legislature of Massachusetts, specially instructed to frame the organic law for the new State, deliberately, in the year 1778, excluded negroes, Indians, and mulattoes from the rights of citizenship.

From the Independent Chronicle, September 23, 1779.

Mr. WILLIS.

Please to insert the following in your Independent Chronicle, and you will oblige the public's friend and humble servant,

JOHN BACON.

Stockbridge, Sept. 10, 1779.

"Open thy mouth, judge righteously, plead the cause of the poor and needy."—KING SOLOMON.

The substance of a speech delivered in the late Convention, on a motion being made for reconsidering a vote, by which this clause, "except Negroes, Indians and Mulattoes," in the twenty-third article of the report of the Committee, was inserted.

Mr. PRESIDENT:—As I have from the beginning of these debates been opposed to that clause, the erasure of which has now been moved for, I beg leave briefly to lay the reasons of my opposition before this honorable Convention.

In the first place, Mr. President, by retaining this clause in our Constitution, we make ourselves singular, or nearly so. No Constitution on the Continent, one only excepted, bears the least complexion of this kind. Say the honorable and patriotick Convention of Pennsylvania, in their Bill of Rights, Art. 7: "all free men having a suffi-

cient evident common interest with, and attachment to the community, have a right to elect officers, or be elected into office." The constitutions in general which have been formed of late through the Continent, breathe a like consistent and genuine spirit of liberty. But be this as it may, Sir, whether we hereby make ourselves singular or not, I have other reasons to offer for being in favor of the motion. By holding up this clause in our constitution, we sap the foundation of that liberty which we are now defending at the expense of all that blood and treasure which we so liberally part with in the prosecution of the present war with Great Britain; by holding up this clause, we contradict the fundamental principle on which we engaged in our present opposition to that power. The principle on which we engaged in this opposition, Sir, I take to be this, that representation and taxation are reciprocal,—that we, not being represented in the Parliament of Great Britain, Parliament had no right to tax us without our consent. When the Parliament of Great Britain assumed this power and plead the charter of this (then) Province to justify their claim, we in our turn, not only plead the same charter in opposition to such claim, but even contended, that on supposition the charter gave them this power, yet it was a power so inconsistent with the essential natural rights of men, that no contract whatever could, in such case, bind us. On this principle, Sir, we engaged in the present war,—on this principle we suppose ourselves justified in resisting, even to blood, that power which would thus arbitrarily exact upon us; and on the same principle, I conceive, the persons excepted in the clause now before the Convention, would be justified in making the same opposition against us which we are making against Great Britain: If not, Mr. President, let any gentleman point out the difference between the two cases; no essential difference has yet been pointed out by any gentleman who has spoke to the question, and no such difference, I presume, does in fact exist.

But I am apprised of an objection that is made by gentlemen on the opposite side. They say, "that by being protected by our laws (without any share in the representation) they secure benefits which are fully equivalent to the tax which we lay upon them." This, Sir, is the very argument by which Great Britain pretend to support their claim of taxing us; and I confess, Sir, it appears to me, in every view, as fully to justify their pretensions with respect to us, as it does ours with respect to those persons who are the subject of the present debate. So

that, by retaining this clause in our constitution, we bring ourselves into this unhappy dilemma, that either in one case or the other, we must, out of our own mouth, and by our own conduct, be condemned. So far as we can justify our conduct in our present opposition to Great Britain, so far it must be condemned as it relates to those who are mentioned in the article now before us and vice versa. But this is not all, Mr. President; Who are to set a value on the privileges which these people enjoy under our government? Do we allow them a voice in the contract? By no means. We set a price upon our own commodity, and oblige them to give it whether they will or not; and this, not as to the *luxuries* of life, not as to the *necessaries* of life only, but even *life itself*. And if we may take upon us, without their consent, to set a value upon those benefits which they receive from our laws, and make them pay accordingly, we may, on the same principle, set these benefits at a higher or lower price, and so tax them in a greater or less proportion according to our own sovereign pleasure. According to our own avowed principles, if we may take from them one farthing in this way, we may by the same rule, take from them every farthing they possess. Nay more, we may subject them to perpetual servitude, as being no more than a just compensation for the benefit they receive in having their lives protected by our laws; and if this is not to establish slavery by a constitution, the foundations of which, it is pretended, are laid in the most extensive principles of liberty, I confess, Sir, I am utterly ignorant of what the terms *liberty* and *slavery* mean.

But it is further urged by gentlemen on the opposite side, "that the case now before the Convention is widely different from that between us and Great Britain,—that Great Britain assume a right to impose taxes on us of which they pay no part themselves,—that the more they lay upon us, the less they have to pay themselves,—that hence there is to them a strong inducement to bear us down by exorbitant taxation; whereas we, in taxing these people, tax ourselves at the same time." But who, Mr. President, perceives not the futility and deceit of this argument? If we are to tax them, not as members of our community, but as receiving particular benefits from our laws, what security can they have that we shall not multiply taxes upon them in proportion to the value which our caprice or covetousness may set upon these supposed benefits. And whether we tax ourselves at the same time that we tax them, or not, is wholly immaterial: They are

to be taxed on quite a different footing from that on which we are taxed ourselves; yea, as persons who do not belong to our community, and the more we lay upon them, the less we shall certainly have to pay ourselves.

But it is still further urged by gentlemen on the other side, "that these persons are *foreigners*, and therefore not intitled to a voice in legislation."

But how does this appear, Mr. President? What, unless it be their color, constitutes them foreigners? Are they not Americans? Were they not (most of them at least) born in this country? Is it not a fact, that those who are not natives of America, were forced here by us, contrary, not only to their own wills, but to every principle of justice and humanity? I wish, Sir, these gentlemen would tell us what they mean by *foreigners*. Do they mean by it, such persons, whose ancestors came from some other country? If so, who of us is not a foreigner? Or do they mean to include under the denomination of *foreigners*, all those who are not born in this State, how long soever they may have lived among us, whatever property they may have acquired, whatever connexions they may have formed, or however they may have been incorporated with us by our present laws and constitution? These people, Sir, by our present constitution, are intitled to the same privileges with any of their fellow-subjects; and by what authority we are now to wrest these rights and privileges from them, I cannot conceive, unless by dint of mere power. And I hope, Sir, that right, as founded in mere power, is not to receive a sanction from our constitution.

But there is one argument more which has been urged by gentlemen on the opposite side, as being of great weight and importance, which is this, "That by erasing this clause out of the constitution, we shall greatly offend and alarm the Southern States." Should this be the case, Sir, it would be surprising indeed! But can it be supposed, Mr. President, that any of the sister States will be offended with us, because we don't see fit to do that which they themselves have not done? Nay, more, will they be offended or alarmed that we do not violate those essential rights of human nature which they have taken the most effectual care to establish and secure? It will not bear a supposition; the argument, Sir, is most ridiculous and absurd.

In fine, Sir, I hope we shall not be so inconsistent with ourselves,

so destitute of all regard to common justice and the natural rights of men, as to suffer this form of constitution to go abroad with this exceptionable clause; I hope the motion will obtain, and the clause be reprobated by the Convention. But should this not be the case, should it eventually appear that there is so great a want of virtue within these walls, I still hope there will be found among the people at large, virtue enough to trample under foot a form of government which thus saps the foundation of civil liberty, and tramples on the rights of men.

We have already intimated that these liberal and enlightened views did not prevail. On the contrary, the "Constitution and Form of Government for the State of Massachusetts Bay, agreed upon by the Convention of said State, February 28, 1778, to be laid before the several towns and Plantations in said State, for their Approbation or Disapprobation," has the following article:

"V. Every male inhabitant of any town in this State, being *free*, and twenty-one years of age, *excepting Negroes, Indians and molattoes*, shall be intitled to vote for a Representative or Representatives, as the case may be. . . .," etc.¹

This not only excludes Negroes, Indians, and Molattoes from the chief right of citizenship, but also recognizes the existence of slavery in the State; and although it was rejected by an overwhelming vote, we have seen no evidence that this feature of the instrument elicited such opposition as might be expected in a community already prepared for negro emancipation and enfranchisement. In the famous Essex Result, the ablest document on the subject now to be found—

¹ The remainder of the section relates to residence and property qualifications, etc.

an elaborate report, written by Theophilus Parsons, of a Committee appointed by the Ipswich Convention for the express purpose of stating the non-conformity of this Constitution to the true principles of government applicable to the territory of the Massachusetts Bay—the fifth article is not referred to; and the existence of slavery, although earnestly deprecated, is clearly recognized, as well as the impracticability of immediate emancipation.

“The opinions and consent of the majority must be collected from persons, delegated by every freeman of the State for that purpose. Every freeman who hath sufficient discretion should have a voice in the election of his legislators. . . . All the members of the State are qualified to make the election, unless they have not sufficient discretion, or are so situated as to have no wills of their own. Persons not twenty-one years old are deemed of the former class. . . . Women also. . . . Slaves are of the latter class and have no wills. But are slaves members of a free government? We feel the absurdity, and would to God, the situation of America and the tempers of its inhabitants were such, that the slaveholder could not be found in the land.” *Result of the Convention, etc.*, pp. 28, 29.

Dr. Gordon continued his zealous championship of the colored races, and in one of his letters on the proposed Constitution¹ attacked this Fifth Article in a most pungent style of opposition. Gordon's rela-

¹ Letter No. II., to the Freemen of the Massachusetts Bay, dated Roxbury, April 2d, 1778, published in the Continental Journal, April 9th, 1778.

tions with the Legislature had been most intimate, as Chaplain to both Houses, and he well knew how reluctantly the partisans of slavery were giving ground. We quote the passages referred to :

“The complexion of the 5th Article is blacker than that of any African ; and if not altered, will be an everlasting reproach upon the present inhabitants ; and evidence to the world, that they mean their own rights only, and not those of mankind, in their cry for liberty. I remember not, that any State have been so inconsistent as to declare in their Constitution, however they may practice, that a freeman shall not have the right of voting, merely because of his being a Negro, an Indian, or a Molatto. I am sorry the Convention did not take the hint when given in time, and avoid this public scandal. It hath been argued, that were Negroes admitted to vote, the Southern States would be offended, and we should be soon crowded with them from thence. This would be to suppose the Southern States as weak as the argument. Will not the Negroes be as likely to crowd into the State, if they may be free, though they are debarred the right of voting? Will any be so hardy as to fly in the face of all the declarations through the Continent, and assert that the Negroes are made to be, and are fit for nothing but slaves? Let such know, that in Jamaica, there are a number of free Negroes, who, resenting the tyranny of their masters, freed themselves from slavery, and continued in a state of war for several years, till at length King George the IIId., by letters patent, empowered two gentlemen to conclude a treaty of peace and friendship with them, which was

done on the 1st of March, 1739, wherein they had their liberties confirmed. The exception of Indians is still more odious, their ancestors having been formerly proprietors of the country. As to Molattoes they should have been defined. We should have been told, whether it intended the offspring of a white and Negro, or also of a white and Indian; and whether the immediate offspring alone, or any of their remote descendants, so that the blood of a white being intermixed with that of a Negro or Indian, it should be contaminated to the latest posterity, and cut off the male offspring to the hundredth generation, from the right of voting in an election.

“Gentlemen, blot out the exception, and thereby wipe off from the country in general, the disgrace that has been brought upon it by the Convention in particular. If any are afraid, that the Bay inhabitants will, in consequence of it, at some distant period, become Negroes, Indians or Molattoes, let the General Court guard against it by future Acts of State.”

Dr. Gordon had already become very obnoxious to the members of the Legislature, and was summarily dismissed from his office of Chaplain to both Houses, April 4th-6th, 1778, in consequence of his Letter I, published in the Independent Chronicle, April 2d, 1778, in which he was said to have “rashly reflected upon the General Court,” and “misrepresented their conduct,” etc.

In Boston, the subject of slavery became the source of angry contention, which grew into public disorder and riots. Thomas Kench, in Col. Craft's Regiment of Artillery, then on Castle Island, had applied to the

Legislature for leave to raise a detachment of negroes for military service. This was on the third of April, 1778. On the seventh of the same month he addressed a second letter to the Council, as follows :

“ The letter I wrote before I heard of the disturbance with Col. Seares, Mr. Spear, and a number of other gentlemen, concerning the freedom of negroes, in Congress Street. It is a pity that riots should be committed on the occasion, as it is justifiable that negroes should have their freedom, and none amongst us be held as slaves, as freedom and liberty is the grand controversy that we are contending for ; and I trust, under the smiles of Divine Providence we shall obtain it, if all our minds can but be united ; and putting the negroes into the service will prevent much uneasiness, and give more satisfaction to those that are offended at the thoughts of their servants being free.

“ I will not enlarge, for fear I should give offence ; but subscribe myself,” &c. *Mass. Arch.*, Vol. 199, 80, 84.

The proposed Constitution failed to pass the ordeal of the popular judgment, so far as an opinion could be gathered from the very partial returns made of the votes. A hundred and twenty towns neglected to express any opinion at all ; and but twelve thousand persons, out of the whole State, went to the polls to answer in any way. ~~Five~~-sixths of them, however, voted in the negative. *Adams's Works* : IV., 214. Thus the Constitution was rejected, negro clause and all sharing the same fate. We have no means of ascertaining the exact state of parties on this subject ; but there can be no doubt that there was a wide difference of opinions among the people.

From the proceedings of the town of Boston, it does not appear that the citizens of that place objected to the negro exclusion, although they were unanimous against the constitution. In Cambridge it was voted down unanimously, all the voters present being Freemen, more than 21 years of age, and neither "a NEGRO, INDIAN or MOLATTO." *Independent Chronicle: June 4, 1778.*

On the contrary, the town of Dartmouth notes the inconsistency of excluding the negroes, &c., and favors their equal recognition, but at the same time assures the public that there is no Negro, Indian or Molatto among their voters. *Continental Journal, June, 1778.*

It is not by any means well ascertained at what period, if ever, the negro was placed on the footing of political equality with the white man in Massachusetts. Public opinion has been justly characterized as a power often quite as strong as the law itself. At once the great Ruler, Lawgiver, and Judge of the Anglo-Saxon race, it has held its throne and seat of judgment nowhere more firmly than in Massachusetts. The slave was "emancipated by the force of public opinion;" and the same authority, without the absolute declaration and forms of law, continued to exclude the negro from actual practical equality of civil and political as well as social rights.

A "petition of several poor negroes and mulattoes," who were inhabitants of the town of Dartmouth, dated at that place on the 10th of February, 1780, shows the condition they were in at that time. They humbly represent:

"That we being chiefly of the African extract, and

by reason of long bondage and hard slavery, we have been deprived of enjoying the profits of our labor or the advantage of inheriting estates from our parents, as our neighbors the white people do, having some of us not long enjoyed our own freedom; yet of late, contrary to the invariable custom and practice of the country, we have been, and now are, taxed both in our polls and that small pittance of estate which, through much hard labor and industry, we have got together to sustain ourselves and families withall. We apprehend it, therefore, to be hard usage, and will doubtless (if continued) reduce us to a state of beggary, whereby we shall become a burthen to others, if not timely prevented by the interposition of your justice and power.

“Your petitioners further show, that we apprehend ourselves to be aggrieved, in that, *while we are not allowed the privilege of freemen of the State, having no vote or influence in the election of those that tax us*, yet many of our color (as is well known) have cheerfully entered the field of battle in the defence of the common cause, and that (as we conceive) against a similar exertion of power (in regard to taxation), too well known to need a recital in this place.

“We most humbly request, therefore, that you would take our unhappy case into your serious consideration, and, in your wisdom and power, grant us relief from taxation, while under our present depressed circumstances,” &c.

This petition was addressed “to the Honorable Council and House of Representatives, in General Court assembled, for the State of Massachusetts Bay,

in New England." The loss or imperfections of the journals of this period prevent us from knowing what, if any, action was had on this petition, but a memorandum in the handwriting of the leading petitioner, on the copy from which the above was taken, tells the story :

"This is the copy of the petition which we did deliver unto the Honorable Council and House, for relief from taxation in the days of our distress. But we received none. JOHN CUFFE."

Another copy of the petition was found, with the date, "January 22d, 1781," not signed, by which it would appear that they intended to renew their application to the government for relief.

The records of the town of Dartmouth also show that these colored inhabitants resisted the payment of taxes, and the 22d of April, 1781, they applied to the selectmen of the town, "to put a stroke in their next warrant for calling a town-meeting, so that it may legally be laid before said town, by way of vote, to know the mind of said town, *whether all free negroes and mulattoes shall have the same privileges in this said town of Dartmouth as the white people have*, respecting places of profit, choosing of officers, and the like, together with all other privileges in all cases that shall or may happen or be brought in this our said Town of Dartmouth." *Nell's Colored Patriots of the Revolution*, pp. 87-90.

It has been stated that these proceedings resulted in establishing the right of the colored man to the elective franchise in Massachusetts, and that a law was enacted by the legislature granting him all the privi-

leges belonging to other citizens. *Ibid.*, pp. 90, 77. But we can find no evidence to corroborate this statement, which is also entirely inconsistent with subsequent legislation.

As late as 1795, the political status of the negro in Massachusetts was by no means definitely determined. Dr. Belknap gave, as the result of his inquiries on the subject, the statement that they were "equally under the protection of the laws as other people. Some gentlemen (says he) whom I have consulted, are of opinion, that they cannot elect, nor be elected, to the offices of government; others are of a different opinion." Mr. Thomas Pemberton was one of the persons referred to by Dr. Belknap, and in his letter of March 12, 1795, says expressly that "the qualifications required by the Massachusetts Constitution prevents the people of colour from their being electors or elected to any public office."

Dr. Belknap continues, "For my own part, I see nothing in the constitution which disqualifies them either from electing or being elected, if they have the other qualifications required; which may be obtained by blacks as well as by whites. Some of them certainly *do* vote in the choice of officers for the state and federal governments, and no person has appeared to contest their right. Instances of the election of a black to any publick office are very rare. I knew of but one, and he was a town-clerk in one of our country towns. He was a man of good sense and morals, and had a school education. If I remember right, one of his parents was black and the other either a white or mulatto. He is now dead." *M. H. S. Coll.*, 1., iv., 208.

The question must have been regarded as of little practical importance, for the relative number of negroes was small; and of those all but a very insignificant fraction were excluded by the property qualification. Had it been regarded with interest enough to call for an authoritative decision, there is little room for doubt what it would have been.

IX.

WE come now to the Constitution of 1780, the instrument by which it is alleged that slavery was abolished in Massachusetts. In the illustration of our subject, its history is very important, and demands careful and accurate criticism.

After the failure of the attempt in 1778, a convention of delegates chosen for the purpose was decided upon to form a constitution of government. They were elected in the summer of 1779, and met at Cambridge on the 1st of September of that year. On the 3d they resolved to prepare a Declaration of Rights of the people of the Massachusetts Bay, and also to proceed to the framing a new Constitution of Government. On the next day, Sept. 4th, a Committee of thirty persons was chosen to prepare a Declaration of Rights and the form of a Constitution. On the 6th September, the Convention adjourned until the 28th October, for the purpose of giving the Committee time to prepare a report. Immediately upon the adjournment, the General Committee met in Boston, and delegated the duty of preparing a draught of a

Constitution to a sub-committee of three members—James Bowdoin, Samuel Adams, and John Adams. By this sub-committee the task was committed to John Adams, who performed it. The preparation of a Declaration of Rights was intrusted by the General Committee to Mr. Adams alone. His own statement with regard to it is, “The Declaration of Rights was drawn by John Adams; but the article respecting religion, was referred to some of the clergy or older and graver persons than myself, who would be more likely to hit the taste of the public.” *MS. Letter of John Adams to William D. Williamson*, 25 February, 1812, quoted in *Williamson's Maine*, 11, 483, note. *Adams's Works*: IV., 215-16.

The first Article of the Declaration of Rights, as reported to the Convention, was as follows :

“ART. I. All men are born equally free and independent, and have certain natural, essential and unalienable rights: among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting their property; in fine; that of seeking and obtaining their safety and happiness.” *Report*, p. 7.

This article, as reported, met with no opposition, elicited little or no discussion, and was accepted with but slight and unimportant verbal amendments. *Journal*, p. 37. It stands thus in the Constitution of Massachusetts :

“ART. I. All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying, and defending their lives and liberties; that of ac-

quiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness." *Constitution*, p. 7.

Its language is nearly the same with that of the first article of the Bill of Rights of Virginia, written by George Mason, and adopted by her Convention on the 12th of June, 1776, when "Virginia proclaimed the Rights of Man." *Bancroft*, VIII., 381. The same language, common in those days, became more familiar in the Declaration of Independence, on the 4th of July, 1776, and in the Pennsylvania Declaration of Rights, July 15th—September 28th, 1776; and this affirmation of natural and even unalienable rights had long ceased to be a novelty before Massachusetts repeated it in her Convention of 1779–80. The Constitution was submitted to the people in March, adopted by a popular vote in June, and the new government went into operation on the 25th of October, 1780.

It is a remarkable statement for a Massachusetts writer to make, but it is undoubtedly true, that "much interest has been felt of late years to know when, and under what circumstances, slavery ceased to exist in Massachusetts." *M. H. S. Coll.*, IV., IV., 333. The fact that Daniel Webster had not been able a few years before his death to determine this question satisfactorily, is pretty good evidence that it was doubtful; and will go far to justify a good degree of caution in its decision. In 1836, Chief-Justice Shaw made an interesting statement on this point:

"How or by what act particularly, slavery was abolished in Massachusetts, whether by the adoption

of the opinion in Somerfet's case, as a declaration and modification of the common law, or by the Declaration of Independence, or by the Constitution of 1780, it is not now very easy to determine, and it is rather a matter of curiosity than utility; it being agreed on all hands, that if not abolished before, it was so by the Declaration of Rights." *Commonwealth v. Aves*, 18 *Pickering*, 209.

Few persons can now be found hardy enough to date the abolition of slavery in Massachusetts from Lord Mansfield's decision in the Somerfet case, or the Declaration of Independence. But the received opinion in Massachusetts is, that the first article of the Declaration of Rights was not simply the declaration of an abstract principle or dogma, which might be wrought out into a practical system by subsequent legislation, but was *intended* to have the active force and conclusive authority of law; to divest the title of the master, to break the bonds of the slave, to annul the condition of servitude, and to emancipate and set free by its own force and efficacy, without awaiting the enforcement of its principles by judicial decision. *Compare 7 Gray*, 478. *5 Leigh*, 623.

We have made diligent inquiry, search, and examination, without discovering the slightest trace of positive contemporary evidence to show that this opinion is well founded. The family traditions which have designated the elder John Lowell as the author of the Declaration, and assigned the intention to abolish slavery as the express motive for its origin, will not stand the test of historical criticism. The truth is, that the bold judicial construction by which

it was afterwards made the instrument of virtual abolition, was only gradually reached and sustained by public opinion—the Court having advanced many steps further than was intended by the Convention or understood by the people, in their decision on this subject. If it were possible that such a purpose could have been avowed in the Convention and wrought into their work, without opposition, it certainly could not have passed absolutely without notice. Such a conversion would be too sudden to be genuine; and if we follow the facts in their natural chronological order, the actual result will fall into its due place and position without force or violation of the truth of history.

Now there is no evidence of opposition, either in the Convention or out of it. Not even a notice of this important revolution, in the newspapers of the day or elsewhere, has rewarded our earnest and careful search. John Adams, the author of the Bill of Rights, was not in favor of immediate emancipation (*see ante*, p. 110). The most strenuous anti-slavery men were unconscious of any such intention or result for a long time afterward; and the newspapers continued to advertise the sales of negroes as before. There is nothing to show that so great a change was contemplated or realized, and those who maintain it would have us believe that the people of Massachusetts, like the Romans on another memorable occasion, suddenly became quite another people.¹

The address of the Convention, on submitting the result of their labors to their constituents, makes no

¹ “Ad primum nuntium cladis Pompeianæ populus Romanus repente factus est alius.”

allusion whatever to this subject. No one can read it—setting forth as it does the principal features of the new plan of government, the grounds and reasons upon which they had formed it, with their explanations of the principal parts of the system—and retain the belief that they had consciously, deliberately, and intentionally adopted the first clause in the Declaration of Rights for the express purpose of abolishing slavery in Massachusetts. The same Bill of Rights provided that “no part of the property of any individual, can, with justice, be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people,” and, in another clause, that “no subject shall be . . . deprived of his property but by the judgment of his peers, or the law of the land.” *Constitution*, p. 10, 11. Did the members of that Convention intend deliberately to divest the recognized title to property of their fellow-citizens, amounting to not less than half a million of dollars, without a word of explanation of the high grounds of justice or public policy on which they based their action? If any further evidence is needed in this connection, it may be found in the subsequent suits, with the entire proceedings and arguments of counsel, by which the result of virtual abolition was finally secured; as well as in the legislative proceedings which followed—all utterly inconsistent with the theory of a direct and intentional abolition by the Convention and People. Compare *Washburn*, in *M. H. S. Coll.*, iv., iv., 333—346.

We have said that earnest anti-slavery men at that time were not aware of the alleged intention of the

Convention to abolish slavery by the declaration in the Bill of Rights. We have previously referred to the earnest efforts of Deacon Colman, of Newbury, against slavery as early as 1774-'75. A controversy between him and his conservative minister, as shown in the Church Records from 1780 to 1785, demonstrates this fact. The minister was the father of Theophilus Parsons, afterwards so well known in the State of Massachusetts as Chief Justice—the “Giant of the Law.” In the Deacon’s Testimony and Declaration, he says :

“The slaves in this State have petitioned for Liberty and Freedom from Bondage, since our Troubles began, in the most importunate and humble manner; *yet they are not set free in a general way.* . . . Magistrates, Ministers and common people have had a hand in this Iniquitous Trade. . . . Should you plead, Sir, the Law of the Land, or the practice of the people, as an excuse in your favour; I answer, that neither the law of the land, nor the commonness of the people’s practice in this affair, alters the nature of the Crime at all: for that which is Wrong in its own nature, can never be made right by any law or practice of men.” *Coffin’s Newbury: 342-50.*

This was written November 7th, 1780, after the establishment of the new government, and months after the Convention had completed their work and submitted it to the people.

The records of the church at Byfield contain a long account of the controversy between Mr. Parsons and his zealous anti-slavery deacon—neither of whom appears to have been aware that slavery, which was

the subject of their dispute, had been abolished, either "virtually" or otherwise.

As late as the 3d of November, 1783, the deacon, *who had been suspended from communion on account of the violence of his zeal against the institution*, addressed the brethren by a communication, in which he declared that they had shut him out of their communion "for bearing Testimony against the detestable practice of Slave keeping, and making merchandise of human people." He adds, "you can't but be sensible the practice of Slave keeping is Reprobated, and Abhor'd by the most Godly people through this State," etc. All seem to be utterly ignorant of the abolition intention of the first clause in the Declaration of Rights. See *Coffin's Newbury*: pp. 342 et seqq.

Let us turn again to the newspapers. Have the advertisements, which provoked the indignation of Doctor Gordon in 1776, disappeared before the new Constitution and the first article of the Bill of Rights? Let the following selections answer the query! They are from papers published during the continuance of the Convention, and the year following, until six months after the new government went into operation.

From the Continental Journal, November 25, 1779.

"To be SOLD A likely NEGRO GIRL, 16 years of Age, for no fault, but want of employ."

From the same, December 16th, 1779.

"To be SOLD, A Strong likely NEGRO GIRL,"
&c.

From the Independent Chronicle, March 9th, 1780.

"To be SOLD, for want of employment, an exceeding likely NEGRO GIRL, aged sixteen."

From the same, March 30th and April 6th, 1780.

“*To be SOLD*, very Cheap, for no other Reason than for want of Employ, an exceeding Active NEGRO BOY, aged fifteen. Also, a likely NEGRO GIRL, aged seventeen.”

From the Continental Journal, August 17, 1780.

“*To be SOLD*, a likely NEGRO BOY.”

From the same, August 24th and September 7th.

“*To be SOLD* or LETT, for a term of years, a strong, hearty, likely NEGRO GIRL.”

From the same, Oct. 19th and 26th, and Nov. 2d.

“*To be SOLD*, a likely NEGRO BOY, about eighteen years of Age, fit for to serve a Gentleman, to tend horses or to work in the Country.”

From the same, October 26th, 1780.

“*To be SOLD*, a likely NEGRO BOY, about 13 years old, well calculated to wait on a Gentleman. Inquire of the Printer.”

“*To be SOLD*, a likely young Cow and CALF. Inquire of the Printer.”

Independent Chronicle, Dec. 14th, 21st, 28th, 1780.

“A NEGRO CHILD, *soon expected, of a good breed*, may be owned by any Person inclining to take it, and Money with it.”

Continental Journal, Dec. 21, 1780, and Jan. 4, 1781.

“*To be SOLD*, a hearty, strong NEGRO WENCH, about 29 years of age, fit for town or country.”

The terms of the following announcement indicate the fact that “notions of Freedom” were beginning to find their way into other heads besides those of masters and mistresses.

From the Continental Journal, March 1, 1781.

“ *To be SOLD*, an extraordinary likely NEGRO WENCH, 17 years old, she can be warranted to be strong, healthy and good-natured, *has no notion of Freedom*, has been always used to a Farmer’s Kitchen and dairy, and is not known to have any failing, but being with Child, which is the only cause of her being sold.”¹

This advertisement, which was repeated for two weeks after in the papers of the 8th and 15th March, must close our quotations of this sort. If it was not the last published in Massachusetts, it ought to have been ! It brings us in point of time to the period in which suits growing out of the relations of master and slave were brought in the courts of law, which ultimately resulted in extending the Declaration in the Bill of Rights to enslaved Indians and Negroes—preaching deliverance to the captives, and setting at liberty them that were bruised—the virtual abolition of slavery.

No contemporaneous report appears to be extant, of the decisions by which the general question of the legality of slavery in Massachusetts was determined. Chief-Justice Parsons, in 1806, in the case so frequently quoted before, stated that, “ in the first action involving the right of the master, which came before

¹ This reminds us of the period in British history when Ireland was the greatest mart for English slaves. In those days, when any one had more children or servants than he could keep, he took them to the ready market of Bristol, and there found Irish merchants, ready to purchase. Malmesbury affirms, that it was no uncommon thing to behold young girls, exposed to sale there, in a state of pregnancy, which raised their value

Bridge’s Jamaica: II., *Notes*, 455-6.

the Supreme Judicial Court after the establishment of the Constitution, the judges declared that, by virtue of the first article of the Declaration of Rights, slavery in this State was no more." *iv. Mass. Reports*, 128. The report does not state what case was here referred to, and there has been a considerable difference of opinion among those who have referred to the subject. The accounts are various and inconsistent, agreeing only in one respect, that a determination gradually grew up to *consider slavery as abolished*, notwithstanding the failure of every attempt to destroy it by legislation.

The case of Elizabeth Freeman, better known as "Mum Bet," has been stated by some as the turning-point of legal decision; in which Judge Theodore Sedgwick defended the slave, who was pronounced free. The biographer of Mr. Sedgwick in the *New American Cyclopædia* says: "This, it is believed, was the first fruit of the declaration in the Massachusetts Bill of Rights that 'all men are born free and equal,' and led to the end of slavery in Massachusetts."¹

The Duke de la Rochefoucault Liancourt gives an account of the termination of slavery in Massachusetts, which is the more interesting that it may have been derived from Mr. Sedgwick himself, with whom he was acquainted at Philadelphia, and whose hospitality he enjoyed in Massachusetts. He says: "In 1781, some negroes, prompted by private suggestion,

¹ A writer in the *Edinburgh Review*, for January, 1864, represents this case as having occurred in 1772, and the result of the Massachusetts Constitution of 1780!

maintained that they were not slaves: they found advocates, among whom was Mr. Sedgwick, now a member of the Senate of the United States; and the cause was carried before the Supreme Court. Their counsel pleaded, 1°. That no antecedent law had established slavery, and that the laws which seemed to suppose it were the offspring of error in the legislators, who had no authority to enact them:—2°. That such laws, even if they had existed, were annulled by the new Constitution. They gained the cause under both aspects: and the solution of this first question that was brought forward set the negroes entirely at liberty, and at the same time precluded their pretended owners from all claim to indemnification, since they were proved to have possessed and held them in slavery without any right. As there were only a few slaves in Massachusetts, the decision passed without opposition, and banished all further idea of slavery.” *Travels, etc.*, II., 166, 212–13.

John Quincy Adams, in reply to a question put by John C. Spencer, stated that “a note had been given for the price of a slave in 1787. This note was sued, and the Court ruled that the maker had received no consideration, as man could not be sold. From that time forward, slavery died in the Old Bay State.” *Nell's Colored Patriots*, 59.

There is now, however, little room for doubt that the leading cases were those concerning a slave named Quork Walker, belonging to Nathaniel Jennison, a farmer of the town of Barre, in Worcester County. The slave deserted his master, and was received and employed as a servant by John Caldwell, a neighbor,

also a farmer.¹ The slave had been beaten and imprisoned, and otherwise maltreated by his master, whether before or after his desertion, or both, does not appear. Out of these principal facts grew the series of actions in the Courts which we are now briefly to sketch. Two of them were commenced in the Inferior Court of Common Pleas for the County of Worcester, at the June Term in 1781. They were entitled, *Nathaniel Jennison vs. John and Seth Caldwell*, and *Quork Walker vs. Nathaniel Jennison*.

The first was a suit for damages for enticing away the slave from his master, etc., which resulted in a verdict against the friends of the slave, and an assessment of damages at twenty-five pounds (25*l.*) in lawful gold or silver, or bills of public credit equivalent thereto, and costs of suit at² in like money, in favor of the master. From this judgment the friends of the slave appealed.

The second was a suit for damages for assault and beating, etc., which resulted in a verdict against the master. The jury found that the said Quork was a freeman, and not the proper negro slave of the defendant, and assessed damages for the plaintiff in the sum of fifty pounds (50*l.*) in lawful gold or silver, or bills of public credit equivalent thereto. The costs were taxed at 6*l.* 11*s.* 7*d.*, like money. From this judgment the master appealed.

Both appeals came on at the next Term of the Su-

¹ Jennison's wife was a Caldwell, and he acquired possession of this slave, in right of his wife, who owned him before marriage. It may be that this controversy originated in some family quarrel.

² The amount of costs is not stated in the record.

perior Court, held at Worcester on the third Tuesday (18th) of September, 1781, before Judges Sargent, Sewall, and Sullivan.

In the first case, *Nathaniel Jennison, Appt.*, vs. *Quork Walker*, the recorded result was—"And now the Appellant being called comes into Court, but does not produce and give into Court attested copies of the writ, Judgment, or of the Evidences filed in the Inferior Court, as the law directs, wherefore it is ordered that his default be recorded." *Docket September Term, 1781, in Worcester. Records, 1781, fol. 79.* In his subsequent attempts to procure a re-entry of this cause, Jennison grounded his petition to the Legislature on the allegation that he had "confided in his Council to produce the papers from the Court of Common Pleas, which papers the said Council failed to produce, by means whereof he became defaulted, and judgment was rendered against him." *Mafs. Resolves, 1782, p. 182.*

Quork Walker, Comp., vs. *Nathaniel Jennison*, accordingly obtained an affirmation of the judgment. As recorded in the Superior Court, it is a "Judgment for 50*l.* Gold or Silver, or Bills of public Credit of the new Emission equivalent 17-8th for one Silver Dollar. Damage and costs taxed at 9*l.* 10*s.* 7*d.* Exon. issued Feb. 6th, 1782." The Legislature granted a stay of execution by their resolve of March 5th, 1782. *Resolves, p. 182.* The legislative proceedings on this subject will be noticed hereafter.

In the appeal of the second case, *John Caldwell et al. Appts.* vs. *Nathaniel Jennison*, the Jury found "the Appellants not guilty in manner and form as the

Appellee in his Declaration has alleged;" and they accordingly had Judgment for Costs. *Records*, 1781, fol. 79, 80.

The array of counsel in this case was distinguished, being, for the Appellants, Caleb Strong and Levi Lincoln; and for the Appellee, Simeon Strong, John Sprague, and William Stearns. Mr. Washburn, in his paper on "the Extinction of Slavery in Massachusetts," gives an interesting account of these suits, and prints "the *substance*" of Mr. Lincoln's brief, which is so important as to provoke our sincere regret that he did not print it entire and without modification. *M. H. S. Coll.*, iv., iv., 34-44.

The result of the civil actions encouraged the friends of the slave to proceed still further; and an indictment was found at the same Term of the Court (September, 1781) against the master "for assault and battery, and false imprisonment." It was not tried until nearly two years later, April Term, 1783, when the defendant was found guilty and sentenced to be fined 40s., pay costs of prosecution, and stand committed till sentence be performed. *Records*, 1783, fol. 85.

Dr. Belknap wrote and printed, in the year 1795, a notice of this trial, which we copy.

"In 1781, at the Court in Worcester County, an indictment was found against a white man for assaulting, beating, and imprisoning a black. He was tried at the Supreme Judicial Court in 1783. His defence was, that the black was his slave, and that the beating, etc., was the necessary restraint and correction of the master. This was answered by citing the aforesaid

clause in the declaration of rights. The judges and jury were of opinion that he had no right to imprison or beat the negro. He was found guilty and fined 40 shillings. This decision was a mortal wound to slavery in Massachusetts." *M. H. S. Coll.*, I., iv., 203.

When owners of slaves found that under the new régime they were to be held liable in damages for correction of their slaves, they were not slow to see the necessary consequences, and at once appealed to the Legislature, if they approved the judgment of the Court, to release them from the statute obligations growing out of their relations under the law of slavery in Massachusetts. Nor did their anxiety diminish when fine and imprisonment for criminal breach of the peace were added to civil damages for the same offence. Had the members of the Convention entertained the opinions which have since been ascribed to them, there would have been no room left for doubtful construction of general principles, for all the laws which sustained slavery would have been expressly repealed, by the very first legislatures under the Constitution, in which many of the same men were present. But the Legislature considered, hesitated, and did nothing. Their proceedings would seem to have been governed by caprice, if we did not recognize the difficulties under which they labored, and the various and conflicting elements which controlled them.

The first movement in the Legislature was made at about the same time the suits were begun at Worcester. In the House of Representatives, on the 9th of June, 1781, it was "*Ordered*, that Mr. Lowell, Col. Ashley, and Mr. Robbins be a Committee with

such as the honorable Senate shall join, to consider a Remonstrance of a number of persons *owning negro servants*, and to report what may be proper to be done thereon." Mr. Lowell promptly declined to serve on this committee, for the next entry is, "Mr. Lowell is excused, and Dr. Dunsmore is put on in his room." *Journal, Vol. II., p. 50.* The order was sent up for concurrence, and we find on the same day, in the Senate, a concurrence in the appointment of "Doct. Denfmore in the room of Mr. Lowell resigned, excused by the House." *Journal, II., 24.* On the 12th of June, the Senate refused to concur in the "Order of the House on the Remonstrance and petition of Nathan Jennifon and others *owning Negro Servants.*" *Ibid., 28.*

We have been unable to find this memorial, in which other slaveholders besides Jennifon joined, apparently with a remonstrance against the very first steps in those proceedings whose results they had no difficulty in foretelling. In all the subsequent applications for legislative relief, Jennifon appears alone.

In the House of Representatives, on the 28th of January, 1782, a petition was read from Nathaniel Jennifon, praying for leave to re-enter an appeal of an action against Quock Walker, which had been defaulted through the neglect of his counsel, at the Supreme Judicial Court next to be holden at Worcester. It was referred to Mr. Metcalf, Mr. Smead, and Mr. Chamberlain, who reported the same day a resolve granting his prayer, which was read and accepted, and sent up for concurrence. *Journal, Vol. II., 487, 492.* The Senate, on the 14th of February, refused to

concur, *Journal*, Vol. II., 263, but on the 5th of March passed a resolve directing, on the petition of Jennifon, that the petitioner serve the adverse party with an attested copy of the Petition, and to show cause. This resolve was concurred in by the House. *Ibid.*, 300. It is printed in the book of resolves, March, 1782, p. 182.

On the 18th of April, 1782, this matter came up again in the Senate, Jennifon having complied with the previous resolve; and his petition, together with the answer of Quock Walker, was read. It was then "ordered, that Israel Nichols, Esq., with such as the House should join be a Committee to consider this Petition and the Answer, hear the parties and report." On the following day, the House concurred and appointed Messrs. Fessenden and White upon the joint Committee. This committee of both Houses presented their report on the 29th of April, on which it was "Ordered that the Petition lie till sufficient evidence be produced that the petitioner lost his Law." *Senate Journal*, II., 344, 363; *House Journal*, II., 676.

The next movement opens a wider view of the whole affair. In the House of Representatives, on the 18th of June, a new petition was presented from Nathaniel Jennifon, "setting forth that he was deprived of ten Negro Servants by a judgment of the Supreme Judicial Court on the following clause of the Constitution, 'That all men are born free and equal,' and praying that if said judgment is approved of, he may be freed from his obligations to support said negroes." *Journal*, III., 99.

Jennifon's original memorial, of which the notice

on the Journal is an abstract, is still preserved. He respectfully “shows that by the Bill of Rights prefixed to the Constitution of Government, it is among other things declared ‘that all men are born free and equal,’—*which clause in the said Constitution has been the subject of much altercation and dispute—that the Judges of the Supreme Judicial Court have so construed the same as to deprive your memorialist of a great part of his property, to which he thought his title good, not only by ancient and established usage, but by the Laws of the Land. That your Memorialist having been possessed of Ten Negro Servants, most of whom were born in his family, some of them young and helpless, others old and infirm, is now informed that by the determination of the Supreme Judicial Court, the said Clause in the Bill of Rights is so to be construed, as to operate to the total discharge and manumission of all Negro Servants whatsoever. What the true meaning of said Clause in the Constitution is, your Memorialist will not undertake to say, but it appears to him the operation thereof in manner aforementioned, is very different from what the People apprehended at the time the same was established.*”

He argues that “they could not mean to offend the Southern States in so capital a point *with them*, and thereby to endanger the Union, and what is more, they could not mean to establish a doctrine repugnant and contradictory to the revealed word of God.” He enforces the latter argument by abundant quotation from the 25th chapter of Leviticus; and concludes his memorial with an earnest appeal to the Legislature, that if servants are to be made free, their masters may also be emancipated—regarding the statute obligation

to provide for the freedmen whenever they should be in want, as a species of slavery also inconsistent with the Bill of Rights.

Jennison's Memorial was at once "committed to Colonel Pope, Mr. Stow, and Dr. Manning." *Journal*, III., 99. We find no further direct trace of it, but, three days afterward, a bill was introduced into the House, entitled "an Act repealing an Act entitled an Act relating to Molatto and Negro slaves;" which was read a first time and referred to the next session of the General Court. *Journal*, III., 418. The act thus proposed to be repealed was the old Province Law of 1703, Chap. 2, whose provisions in restraint of emancipation, etc., we have previously noticed (*ante*, pp. 53-4); and whose repeal would be in accordance with the alternative proposition in the memorial of Jennison.

Whether they were stimulated by the new views of the subject in the House, or "sufficient evidence had been produced" to satisfy them that Jennison had "lost his law," we cannot say; but on the 3d of July, 1782, the Senate passed another resolve, "on the petition of Nathaniel Jennison, permitting him to re-enter his appeal, etc., at the Supreme Judicial Court at Worcester." They sent it down for concurrence, but, this time, the House refused to concur. *Senate Journal*, III., 109.

Having taken the initiative towards repealing the old laws concerning the rights and obligations of masters and slaves, they may have thought it unnecessary to promote judicial action, until the new system should be perfected. Nearly three months

afterward, on the 26th of September, 1782, they sent a message to the Senate to request that the petition (and resolve thereon) of Mr. Nathaniel Jennison, "on the files of the Senate, might be sent down to the House, which was done. *House Journal*, III., 203. *Senate Journal*, III., 151. We find no further action of either branch of the Legislature on this petition.¹

At the next session of the General Court, on the 7th of February, 1783, the bill for repealing the Act of 1703, which had been so referred, was brought up and read, and "Saturday, 10 o'clock, assigned for the second reading thereof." *House Journal*, III., 436. On the 8th, "the bill was taken up and debated. Whereupon it was ordered that Mr. Sedgwick, Gen. Ward, Mr. Dwight, Mr. Dane, and Mr. Cranch, be a Committee to bring in a bill upon the following principles :

- 1st. Declaring that there never were legal slaves in this Government.
- 2d. Indemnifying all Masters who have held slaves *in fact*.
- 3d. To make such provisions for the support of Negroes and Molattoes as the Committee may find most expedient." *Ibid.*, 444.

¹ Nathaniel Jennison appears again with a petition in the House, on the 29th of May, 1784, praying that a judgment obtained against him in a court of law might be set aside. It was referred to a committee, who reported, on the 2d of June, 1784, a resolve granting its prayer. Debate ensued, and the resolve was re-committed. On the 4th of June, the committee reported another resolve for staying the execution therein mentioned in part, and granting a new trial. This was accepted and sent up for concurrence. *Journal*, v., 19-20, 30, 37. We have been unable to ascertain whether the judgment and execution referred to have any connection with the slave cases.

On the 28th of February, "a Bill intituled an Act respecting Negroes and Molattoes was read the first time, and Saturday, 10 o'clock, assigned for the second reading thereof." *Ibid.*, 529. It was read a second time on the first of March; and, on the 4th, was read a third time, passed to be engrossed, and sent up for concurrence. *Ibid.*, 537. In the Senate, on the 7th of March, "a Bill entitled 'An Act respecting Negroes and Molattoes' was read the first time, and ten o'clock to-morrow is assigned for the second reading." *Senate Journal*, III., 413.

But it never had that second reading; and this last attempt in the legislative annals of Massachusetts, to provide, at the same time, for the history and law of slavery within her own borders, came to an untimely end, like all its predecessors.

If the bill should be found, and its history more fully explained, especially the causes of its failure, much additional light may be thrown upon the state of public opinion in Massachusetts on this subject in 1783. As to the proposed declaration, that there never were *legal* slaves in Massachusetts, we need only say, that its authors could hardly have been familiar with all the facts of that history which they thus determined to sum up in a contradiction. Neither that, nor the proposition to indemnify masters for their losses by emancipation from this illegal and illusive slavery, which never had any lawful existence, was ever heard of again in that day and generation. But the failure to make suitable provision for the support of Negroes and Mulattoes, led to serious difficulties, great embarrassment in the law-courts and

Legislature, constant and continued litigation, in which the State authorities, towns, and individuals continued struggling until the last pauper Indian, negro, or mulatto, who had been a slave, relieved himself and the community by dying off.¹ It is a humiliating fact, which should not be omitted here, that the most distinct and permanent evidence of service of the colored patriots of the Revolution, belonging to Massachusetts (most of whom were or had been slaves), has been found in the reports of the law courts in pauper cases.

Upon a comparison of the condition of the negro in Massachusetts, before and after emancipation, Dr. Belknap said that, "unless *liberty* be reckoned as a compensation for many inconveniences and hard-

¹ Many petitions were presented to the Legislature concerning the support of pauper negroes. The committee on the revision of the laws were instructed to report who was responsible. *Journals*, IX., 85, 125. In 1790, the House were requested to decide whether they were chargeable to the State or Towns. *Ib.*, X., 230. In 1793, on the 8th of March, "a Bill determining Indians, Negroes, and Mulattoes, who are objects of charity, to be the poor of this commonwealth," was read in the House, and committed to Mr. Sewall, Mr. Thompson, and Mr. Smead. *Mass. Spy*, March 21, 1793. Dr. Belknap stated, in 1795, that the question had not then been decided, either in the Legislature or by the courts. *M. H. S. Coll.*, I., iv., 208. In the case of *Shelburne vs. Greenfield*, in Hampshire, 1795, the court decided that certain slaves had gained a settlement where their masters were settled, and therefore were not chargeable on the commonwealth as State paupers. They gave no opinion on the point, whether they were to be the charge of the town, or of their late masters; nor was this point decided when James Sullivan communicated the report of this case, with others, for publication in 1798. *M. H. S. Coll.*, I., v., 46, 47. In the case of *The Inhabitants of Shelburne vs. The Inhabitants of Greenfield*, 1795, the children of two negro slaves were considered to have their settlement in the latter town, because their parents had a settlement there under their master; although the parents were married, and their children born, in Shelburne. *MS. referred to in Andover vs. Canton*, 13 *Mass. Reports*, 552.

ships, the former condition" was in most cases preferable. This was in 1795. In 1846 a Massachusetts author wrote as follows respecting their descendants remaining in the State:

"A prejudice has existed in the community, and still exists against them on account of their color, and on account of their being the descendants of slaves. They cannot obtain employment on equal terms with the whites, and wherever they go a sneer is passed upon them, as if this sportive inhumanity were an act of merit. They have been, and are, mostly servants, or doomed to accept such menial employment as the whites decline. They have been, and are, scattered over the Commonwealth, one or more in over two thirds of all the towns; they continue poor, with small means and opportunities for enjoying the social comforts and advantages which are so much at the command of the whites. Thus, though their legal rights are the same as those of the whites, their condition is one of degradation and dependence, and renders existence less valuable, and impairs the duration of life itself. . . . Owing to their color and the prejudice against them, they can hardly be said to receive . . . even so cordial a sympathy as would be shown to them in a *slave* state, owing to their different position in society." *Chickering's Statistical View*, p. 156. In view of these facts, it will hardly be deemed strange, that the same writer calmly contemplated their extinction as a race, comforting himself with the reflection, that "many instances of similar displacement are to be found in history." *Ibid.*, pp. 159-60.

X.

WE have still to notice two acts of legislation in Massachusetts, which were passed in the year 1788—eight years after the alleged termination of slavery in that State by the adoption of the Constitution. These acts were passed just after the adoption of the Federal Constitution by the State Convention.

The first is the only one directly and positively hostile to slavery to be found among all their statutes. It is a very remarkable fact that the reluctance of the Legislature to meet the subject fairly and fully in front should have left their statute-book in so questionable a shape. With Portia, glowing with delight at the unsuccessful choice of her false suitor, they seem to have wished to say,

“ A gentle riddance : draw the curtains ; go—
Let all of his complexion chuse me so.”

Merchant of Venice, Act II., Sc. VIII.

But neither the cupidity of their slave-trading merchants, nor the peculiar improvidence of the negro—the one sharpened by successful gain, the other hardened into hopeless acquiescence with pauperism—would permit this “gentle riddance,” and although the “curtains” have been “drawn” over these disagreeable features for nearly a century, the historian of slavery must let in the light upon them.

As early as 1785, the Legislature instituted an inquiry as to the measures proper to be adopted by them to discountenance and prevent any inhabitant of the Commonwealth being concerned in the slave-

trade. A joint committee was appointed on the subject, Jan. 25th, 1785—William Heath and John Lowell on the part of the Senate, and Mr. Reed, Mr. Hofmer, and Mr. Sprague, of the House. The inquiry was also extended to the condition of negroes then in the Commonwealth, or who might thereafter come or be brought into it. *H. of R. Journals*, v., 222. Bills were prepared and referred to the Committee on the Revision of the Laws, with instruction to revise all the laws respecting negroes and mulattoes, and report at the next sitting of the General Court. *Ib.*, 342.

In the following year, March 1, 1786, a joint order was made for a committee to report measures for preventing negroes coming into the Commonwealth from other States. *H. of R. Journals*, vi., 463. Another similar order was made by the House of Representatives in 1787. *Journals*, vii., 524.

Earlier in the same year, February 4, 1787, a number of African blacks petitioned the Legislature for aid to enable them to return to their native country. *Ib.*, vii., 381. A Quaker petition against the slave-trade was read in the Senate, June 20, 1787, and not accepted, but referred to the Revising Committee, who were directed to report a bill upon "the subject matter of negroes in this Commonwealth at large." *Senate*, Vol. viii., 81. *H. of R.*, Vol. viii., 88.

The prohibition of the slave-trade by Massachusetts was at last effected in 1788. A most flagrant and outrageous case of kidnapping occurred in Boston in the month of February, in that year. *M. H. S. Coll.*, i., iv., 204. Additional particulars may be found by reference to the newspapers of the day. Especially

The N. Y. Packet, Feb. 26 and Aug. 29, 1788. This infamous transaction aroused the public indignation, and all classes united in urging upon the Legislature the passage of effectual laws to prevent the further prosecution of the traffic, and protect the inhabitants of the State against the repetition of similar outrages.

Rev. Dr. Jeremy Belknap was one of the foremost in promoting the passage of this act. He consulted some of his friends as to the practicability of improving the occasion to effect the abolition of slavery in the State. His brother-in-law, Mr. Samuel Eliot, agreed with him that the time was most opportune, but said the difficulty in such cases was, who should step forward,—and recommended him to suggest to the Association of ministers, at their next meeting, a petition to the General Court, whose session was then about to commence; if he failed to gain the co-operation of the ministers, to apply to the Humane Society, and at all events to have a petition drafted.

Mr. Belknap drew up a petition, which his friends pronounced “incapable of amendment,” gained the support of the Association, and of a large number of citizens besides. The blacks also presented a petition,¹ written by Prince Hall, one of their number, and there was also that of the Quakers in 1787, already noticed, before the Legislature. *Life of Belknap*, 159, 160.

The movement was successful, and on the 26th of March, 1788, the Legislature of Massachusetts passed

¹ The petition of the negroes, 27th February, 1788, is in the Massachusetts Spy, 24th April, 1788.

“An Act to prevent the Slave-Trade, and for granting Relief to the Families of such unhappy Persons as may be Kidnapped or decoyed away from this Commonwealth.”

By this law it was enacted “that no citizen of this Commonwealth, or other person residing within the same,” shall import, transport, buy, or sell any of the inhabitants of Africa as slaves or servants for term of years, on penalty of fifty pounds for every person so misused, and two hundred pounds for every vessel fitted out and employed in the traffic. All insurance made on such vessels to be void, and of no effect. And to meet the case of kidnapping, when inhabitants were carried off, actions of damage might be brought by their friends—the latter giving bonds to apply the moneys recovered to the use and maintenance of the family of the injured party.

A proviso was added, “*That this act do not extend to vessels which have already sailed, their owners, factors, or commanders, for, and during their present voyage, or to any insurance that shall have been made, previous to the passing of the same.*” How far this proviso may be justly held to be a legislative sanction of the traffic, we leave the reader to decide. It is obvious that the “public sentiment” of Massachusetts in 1788 was not strong enough against the slave-trade, even under the atrocious provocation of kidnapping in the streets of Boston, to treat the pirates, who had already sailed, as they deserved. Rome was not built in a day,—neither could the modern Athens rejoice in an anti-slavery Minerva, fresh in an instant from the brain of the almighty “public sentiment” of Massachusetts.

This act, as we have seen, passed on the 25th of March, 1788. It was accompanied by another act, passed on the following day, hardly less hostile to the negro than this was to slavery—the pioneer of a series of similar acts (though less severe) which have subjected the new States to most unsparring censure.

The Massachusetts Law, entitled “*An act for suppressing and punishing of Rogues, Vagabonds, common Beggars, and other idle, disorderly, and lewd Persons,*” was presented in the Senate on the 6th of March, 1788. It went through the usual stages of legislation, with various amendments, and was finally passed on the 26th of March, 1788. It contains the following very remarkable provision :

“ V. *Be it further enacted by the authority aforesaid* [the Senate and House of Representatives in General Court assembled], that no person being an African or Negro, other than a subject of the Emperor of Morocco, or a citizen of some one of the United States (to be evidenced by a certificate from the Secretary of the State of which he shall be a citizen), shall tarry within this Commonwealth, for a longer time than two months, and upon complaint made to any Justice of the Peace within this Commonwealth, that any such person has been within the same more than two months, the said Justice shall order the said person to depart out of this Commonwealth, and in case that the said African or Negro shall not depart as aforesaid, any Justice of the Peace within this Commonwealth, upon complaint and proof made that such person has continued within this Commonwealth ten days after notice given him or her to depart as afore-

faid, shall commit the faid person to any house of correction within the county, there to be kept to hard labour, agreeable to the rules and orders of the faid house, until the Sessions of the Peace, next to be holden within and for the faid county; and the master of the faid house of correction is hereby required and directed to transmit an attested copy of the warrant of commitment to the faid Court on the first day of their faid session, and if upon trial at the faid Court, it shall be made to appear that the faid person has thus continued within the Commonwealth, contrary to the tenor of this act, he or she shall be whipped not exceeding ten stripes, and ordered to depart out of this Commonwealth within ten days; and if he or she shall not so depart, the same process shall be had and punishment inflicted, and so *toties quoties*.”¹

The edition from which we copy is the earliest classified edition of “The Perpetual Laws of the Commonwealth of Massachusetts,” and is not to be found in Part I. among those relating to “The Publick and Private Rights of Persons,” nor among the “Miscellaneous” Statutes, but in “Part IV.,” concerning “*Criminal Matters*.” We doubt if anything in human legislation can be found which comes nearer branding color as a crime!

By this law, it will be observed that all negroes,

¹ The old provincial statute, from which this law was mainly copied, provided for the correction by whipping, etc., of the rogues and vagabonds (without distinction of color) for whose benefit the original law was designed; but in the progress of this law through the Legislature, this feature was stricken out of that portion of the bill, but the “African or Negro” gained what the “rogue and vagabond” lost by the change. Compare *Mass. Prov. Laws of 1699, Chap. vi.*, and *Journal of H. of R., VIII., 500.*

resident in Massachusetts, not citizens of some one of the States, were required to depart in two months, on penalty of being apprehended, whipped, and ordered to depart. The process and punishment could be renewed every two months. The only contemporary explanation of the design of the law which we have met with is to the effect that it was intended to prevent fugitive slaves from resorting to that State, in hopes to obtain freedom, and then being thrown as a deadweight upon that community. *Belknap*, 1795. A recent writer states that this "enactment was said to have been the work of her [Massachusetts] leading lawyers, who were sufficiently sagacious to foresee the dangerous consequences of that constitutional provision which, on restoring fugitives from labor, not only threatened to disturb the public peace, but the stability of the system." *Amory's Life of Sullivan*, 1., 226, note. We give this illustration of legal sagacity in Massachusetts for what it is worth, although we are satisfied that the statute itself clearly illustrates the intention of those who framed it. *Expositio contemporanea est optima.*

Realizing the "deadweight" already resting upon them in the body of their own free negroes (though comparatively small in number), they evidently thought it "sagacious" to prevent any addition to it. Future research must ascertain who were "citizens" of Massachusetts in 1788, before we can safely declare that even Massachusetts Negroes, Indians, and Mulattoes, were exempted from the alternative of exile or the penalties of this statute. The reader will not fail to notice below, the arbitrary and illegal extension of the statute, in its application to "people of color,

commonly called Mulattoes, *presumed* to come within the *intention*” of the law.

We have met with one example of the enforcement of this law, which is almost as “singular” as the statute itself. In the *Massachusetts Mercury, Boston, printed by Young and Minns, Printers to the Honorable the General Court, September 16, 1800, No. 22, Vol. xvi.*, the following notice occupies a conspicuous place, filling a column of the paper :

NOTICE TO BLACKS.

THE Officers of Police having made return to the Subscriber of the names of the following persons, who are Africans or Negroes, not subjects of the Emperor of *Morocco* nor citizens of the *United States*, the same are hereby warned and directed to depart out of this Commonwealth before the 10th day of October next, as they would avoid the pains and penalties of the law in that case provided, which was passed by the Legislature, March 26, 1788.

CHARLES BULFINCH,

Superintendent.

By order and direction of the Selectmen.

OF PORTSMOUTH.

Prince Patterson,	Eliza Cotton,
Flora Nash.	

RHODE ISLAND.

Thomas Nichols and	Phillis Nichols,
Hannah Champlin,	Plato Alderfon,
Raney Scott,	Jack Jeffers,
Thomas Gardner,	Julius Holden,
Violet Freeman,	Cuffy Buffum,
Sylvia Gardner,	Hagar Blackburn,
Dolly Peach,	Polly Gardner,
Sally Alexander,	Phillis Taylor.

PROVIDENCE.

Dinah Miller,	Silvia Hendrick,
Rhode Allen,	Nancy Hall,
Richard Freeman,	Elizabeth Freeman,
Nancy Gardner,	Margaret Harrifon.

CONNECTICUT.

Bristol Morandy,	John Cooper,
Scipio Kent,	Margaret Ruffell,
Phœbe Seamore,	Phœbe Johnson,
Jack Billings.	

NEW LONDON.

John Denny,	Thomas Burdine,
Hannah Burdine.	

NEW YORK.

Sally Evens,	Sally Freeman,
Cæsar West and	Hannah West,
Thomas Peterfon,	Thomas Santon,
Henry Sanderfon,	Henry Wilfon,
Robert Willet,	Edward Cole,
Mary Atkins,	Polly Brown,
Amey Spalding,	John Johnson,
Rebecca Johnson,	George Homes,
Prince Kilsbury,	Abraham Fitch,
Joseph Hicks,	Abraham Francis,
Elizabeth Francis,	Sally Williams,
William Williams,	Rachel Pewinck,
David Dove,	Esther Dove,
Peter Bayle,	Thomas Bostick,
Katy Bostick,	Prince Hayes,
Margaret Bean,	Nancy Hamik,
Samuel Benjamin,	Peggy Ocamum,
Primus Hutchinson.	

PHILADELPHIA.

Mary Smith,	Richard Allen,
Simon Jeffers,	Samuel Pofey,
Peter Francies,	Prince Wales,
Elizabeth Branch,	Peter Guft,
William Brown,	Butterfield Scotland,

Clariffa Scotland,	Cuffy Cummings,
John Gardner,	Sally Gardner,
Fortune Gorden,	Samuel Stevens.

BALTIMORE.

Peter Larkin and	Jenny Larkin,
Stepney Johnfon,	Anne Melville.

VIRGINIA.

James Scott,	John Evens,
Jane Jackson,	Cuffey Cook,
Oliver Nash,	Robert Woodfon,
Thomas Thompfon.	

NORTH CAROLINA.

James Jurden,	Polly Johnfon,
Janus Crage.	

SOUTH CAROLINA.

Anthony George,	Peter Cane.
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HALIFAX.

Catherine Gould,	Charlotte Gould,
Cato Small,	Philis Cole,
Richard M'Coy.	

WEST INDIES.

James Morfut and	Hannah, his wife,
Mary Davis,	George Powell,
Peter Lewis,	Charles Sharp,
Peter Hendrick,	William Shoppo and
Mary Shoppo,	Ifaac Johnfon,
John Pearce,	Charles Efings,
Peter Branch,	Newell Symonds,
Rofanna Symonds,	Peter George,
Lewis Viçtor,	Lewis Sylvefter,
John Laco,	Thomas Fofter,
Peter Jefemy,	Rebecca Jefemy,
David Bartlet,	Thomas Grant,
Joseph Lewis,	Hamet Lewis,
John Harrifon,	Mary Brown,
Bofton Alexander.	

CAPE FRANCOIS.

Cafme Francisco and	Nancy, his wife,
Mary Fraceway.	

AUX CAYES.

Sufannah Rofs.

PORT AU PRINCE.

John Short.

JAMAICA.

Charlotte Morris, John Robinfon.

BERMUDA.

Thomas Williams.

NEW PROVIDENCE.

Henry Taylor.

LIVERPOOL.

John Mumford.

AFRICA.

Francis Thompfon,	John Brown,
Mary Jofeph,	James Melvile,
Samuel Bean,	Hamlet Earl,
Calo Gardner,	Charles Mitchel,
Sophia Mitchel,	Samuel Frazier,
Samuel Blackburn,	Timothy Philips,
Jofeph Ocamum.	

FRANCE.

Jofeph —

ISLE OF FRANCE.

Jofeph Lovering.

LIST OF INDIANS AND MULATTOES.

The following perfons from feveral of the *United States*, being people of colour, commonly called Mulattoes, are prefumed to come within the intention of the fame law; and are accordingly warned and directed to depart out of the Commonwealth before the 10th day of October next.

RHODE ISLAND.

Peter Badger,	Kelurah Allen,
Waley Green,	Silvia Babcock.

PROVIDENCE.

Polly Adams,	Paul Jones.
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CONNECTICUT.

John Brown,	Polly Holland,
John Way and	Nancy Way,
Peter Virginia,	Leville Steward,
Lucinda Orange,	Anna Sprague,
Britton Doras,	Amos Willis,
Frank Francies.	

NEW-LONDON.

Hannah Potter.

NEW-YORK.

Jacob and Nelly Cum- mings,	James and Rebecca Smith, Judith Chew,
John Schumagger,	Thomas Willouby,
Peggy Willouby,	John Reading,
Mary Reading,	Charles Brown,
John Miles,	Hannah Williams,
Betsy Harris,	Duglafs Brown,
Sufannah Foster,	Thomas Burros,
Mary Thomfon,	James and Freelope Buck,
Lucy Glapcion,	Lucy Lewis,
Eliza Williams,	Diana Bayle,
Cæfar and Sylvia Caton,	— Thompson,
William Guin.	

ALBANY.

Elone Virginia,	Abijah Reed and
Lydia Reed,	Abijah Reed, Jr.,
Rebecca Reed and	Betsy Reed.

NEW-JERSEY.

Stephen Boadley,	Hannah Victor.
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PHILADELPHIA.

Polly Boadley,	James Long,
Hannah Murray,	Jeremiah Green,
Nancy Principefo,	David Johnfon,
George Jackfon,	William Coak,
Mofes Long.	

MARYLAND.

Nancy Guft.

BALTIMORE.

John Clark,	Sally Johnfon.
-------------	----------------

VIRGINIA.

Sally Hacker,	Richard,
John Johnfon,	Thomas Steward,
Anthony Paine,	Mary Burk,
William Hacker,	Polly Lofours,
Betfy Guin,	Lucy Brown.

AFRICA.

Nancy Doras.¹

This notice must have been generally published in Boston, and was copied in other cities without the list of names. We have met with it in the *Commercial Advertiser* of the 20th September, 1800, and the *Daily Advertiser*, 22d September, 1800, both in New York. Also in the *Gazette of the United States and Daily Advertiser* of 23d September, 1800, in Philadelphia.

The only comments of the Boston press on the subject which we have seen indicate that it was simply carrying out the original design of the act, to abate pauperism;² but references to it in the New York and Philadelphia papers hint at another probable cause

¹ Mr. Nell, in his work on the Colored Patriots of the American Revolution, notices (pp. 96-97), an African Benevolent Society, instituted at Boston, in 1796. He says, its benevolent objects were set forth in the preamble, which also expressed its loyalty as follows: "Behaving ourselves, at the same time, as true and faithful *citizens* of the Commonwealth in which we live, and that we take no one into the Society who shall commit any injustice or outrage against the laws of their country." He adds a list of the members of the "African Society." A comparison of this list with that above shows that one fourth of the members were driven out of the Commonwealth in 1800.

² See "Africanus," in *The Independent Chronicle and the Universal Advertiser*, Boston, September 25, 1800.

of this stringent and sweeping application of the statute.

In the year 1800, the whole country was excited by the discovery of an alleged plot for a general insurrection of negroes at the South. Gabriel, the negro-general, was the "hero," though not the only victim. The affair assumed at once a very serious aspect, and the alarm was "awful" in Virginia and South Carolina. The party violence of the day was not slow to make use of it, and it was doubtless true, that the principles of Liberty and Equality had been in some degree infused into the minds of the negroes, and that the incautious and intemperate use of these words by the "fierce democracie" of that day in Virginia may have inspired them with hopes of success.

But the alarm was not confined to Virginia. Even in Boston, fears were expressed and measures of prevention adopted. *N. Y. Advertiser*, Sept. 26, 1800. The Gazette of the United States and Daily Advertiser, by C. P. Wayne, Vol. xviii., No. 2493, Philadelphia, September 23, 1800, copies the "Notice" with these remarks:

"The following notice has been published in the Boston papers: It seems probable, from the nature of the notice, that some suspicions of the design of the negroes are entertained, and we regret to say there is too much cause."

Such was the act, and such was one of its applications. Additional acts were passed in 1798 and 1802, but this portion was neither modified nor repealed. It appears in the revised edition of 1807, without change. In 1821, the Legislature of Massachusetts,

alarmed by "the increase of a species of population, which threatened to become both injurious and burdensome," and, fully alive to "the necessity of checking" it, appointed a committee to report a bill concerning the admission into the State of free Negroes and Mulattoes.

In the House of Representatives, June 7, 1821, it was "Ordered, that Messrs. Lyman of Boston, Bridgeman of Belchertown, Chandler of Lexington, be a Committee to take into consideration the expediency of making any alterations in the laws of this Commonwealth concerning the admission into a residence in this State of Negroes and Mulattoes, with leave to report by bill or otherwise." *Journals, Vol. XLII., 62.* On the 14th of June, the journal notes a Report on the Free Negroes, detailing a statement of facts, and authorizing the appointment of a committee to report a bill at the next session. Read and accepted, and the same gentlemen were appointed. *Ibid., 121.* On the next day, the House refused to reconsider the vote for a committee, etc. *Ibid., 129.*

At the next session, on the 15th of January, 1822, a "report of the Committee appointed at the last session concerning the admission into this State of Free Negroes, praying to be discharged from that subject, was read, and the same was ordered to lie on the table. The same was afterwards accepted." *Ibid., 174.*

This report, written by Theodore Lyman, Jr., chairman of the Committee, was printed. It justifies the motive which induced the appointment of the Committee by the following statements: "that the

black convicts in the State Prison, on the first of January, 1821, formed $146\frac{1}{2}$ part of the black population of the State, while the white convicts, at the same time, formed but 2140 part of the white population. It is believed that a similar proportion will be found to exist in all public establishments of this State; as well Prisons as Poor-Houses." The Committee, however, "found it impossible, after all the research and deliberation in their power to bestow on the subject, to accomplish that duty which they undertook by the direction of the House of Representatives. They have not succeeded in preparing a bill, *the provisions of which they could conscientiously vindicate to this House.* They have already found in the Statute Books of this Commonwealth, a law passed in 1788, regulating the residence in this State of certain persons of color—they believe that this law has never been enforced, and, ineffectual as it has proved, they would never have been the authors of placing among the Statutes, a law so arbitrary in its principles, and in its operation so little accordant with the institutions, feelings, and practices of the people of this Commonwealth. The History of that law has well convinced the Committee that no measure (which they could devise) would be attended with the smallest good consequence. That it would have been matter of satisfaction and congratulation to the Committee if they had succeeded in framing a law, which should have received the approbation of this Legislature, and should have promised to check and finally to overcome an evil upon which they have never been able to look with unconcern. But a law, which should produce that effect, would entirely depart from

that love of humanity, that respect for hospitality and for the just rights of all classes of men, in the constant and successful exercise of which, the inhabitants of Massachusetts have been singularly conspicuous.”¹

The committee, however, did not recommend a repeal of the act of 1788. Is it possible to avoid the inference that the true reason of their failure to report a new bill, such as they were instructed to prepare, was that they considered the State amply protected by the old law?

It appears again in the revised laws of 1823. Another additional act was passed in 1825, but without alteration of the provision against negroes; and this statute, “so arbitrary in its principle, and in its operation so little accordant with the institutions, feelings and practices of the people of the Commonwealth,” continued to disgrace the Statute-Book of Massachusetts until the first day of April, 1834, after which time

¹ Although this committee did not accomplish their assigned task, they did achieve a further report, by way of addition, which deserves notice. They agreed that “it does not comport with the dignity of this State, to withhold that brief statement of facts, to be found in its annals, concerning the abolition of this trade in Massachusetts—a statement which will prove both highly honorable, and in perfect accordance with that remarkable spirit of wholesome and rational liberty, by which this Commonwealth has been greatly distinguished from the earliest period. But to the clear understanding and better elucidation of this subject, the committee think it useful to introduce the following short account of the existence of Slavery in Massachusetts.” In the elaborate statement which follows, there are no important facts which are not already familiar to the reader of these notes; but there is one idea which has, at least, the merit of novelty. After giving the general statistics of the slave population, down to the time of the Revolution, they say, “These slaves were procured in several ways—*either from the Dutch, in New York, from the Southern provinces in North America . . . Few came by a direct trade,*” etc.

its undistinguished repeal, (in the general repealing section of an act of March 29th, 1834, for the regulation of Gaols and Houses of Correction,) no longer left "public opinion" to regulate its enforcement.

And here we rest. With the exception of the repeal, already mentioned, *ante*, p. 59, of the law prohibiting the intermarriage of whites with Indians, Negroes, or Mulattoes, and the obscure statute of 1863, which terminated the long exclusion of the latter from the ranks of the State militia, and perhaps obliterated the last vestige of the formal legislation of Massachusetts against them, there is nothing in the subsequent history or politics of the State relating to the subject of these Notes. The anti-slavery agitations of the last thirty years, in which Massachusetts has borne so conspicuous a part, have little if any historical connection with the existence of Slavery in that Commonwealth. As "agreed on all hands," it was undoubtedly "considered as abolished;" and during these stormy and portentous contests which have changed the history of the nation, it has been "put aside and covered," and "remembered only as forgotten."

The reader of these Notes cannot fail to notice the strong resemblance in the mode of the extinction of slavery in Massachusetts and that of villenage in

England. Of the latter Lord Mansfield said, in 1785, that "villains in gross may in point of law subsist at this day. But the change of manners and customs has effectually abolished them in point of fact." *Ante*, p. 115, note. If the parallel may be continued, it could be said with equal justice that slavery, having never been formally prohibited by legislation in Massachusetts, continued to "subsist in point of law" until the year 1866, when the grand Constitutional Amendment terminated it forever throughout the limits of the United States. It would be not the least remarkable of the circumstances connected with this strange and eventful history, that, although *virtually* abolished before, the actual prohibition of slavery in Massachusetts as well as Kentucky, should be accomplished by the votes of South Carolina and Georgia.

APPENDIX.

A. THE MILITARY EMPLOYMENT OF NEGROES IN MASSACHUSETTS.

THE necessities of the situation, for a few years after the first settlements, made everybody a soldier ; indeed, put arms in the hands of women and children.

The General Court made an order on the 27th of May, 1652, "that all Scotfmen, Negeres and Indians inhabiting with or servants to the English from the age of sixteen to sixty years, shal be lifted, and are hereby enjoyned to attend traynings as well as the English." At the session in May, 1656, however, this order was repealed, so far as it related to negroes and Indians, as follows :

"For the better ordering and settling of severall cafes in the military companies within this jurisdiction, which, upon experience, are found either wanting or inconvenient, it is ordered and declared by this Court and the authoritie thereof, that henceforth no negroes or Indians, although servants to the English, shal be armed or permitted to trayne, and y^e no other person shall be exempted from trayning but such as some law doth priviledge, or some of the county courts or courts of assitants, after notice of the partyes desires, to the officers of each company to which they belonge, upon just cause, shal dismisf."

The law, as printed in 1660, required "every person above the age of sixteen years," to "duely attend all Military Exercise and service," with certain exceptions. Neither Indians, Negroes, or Slaves are among those exempted ; but it is reasonably certain that they were at no time permitted to bear arms during the period from 1656 down to the commencement of the Revolution. Gov. Bradstreet, in May, 1680, expressly states, in answer to an inquiry from the Committee for Trade and Plantations as to the number of men able to bear arms—

"We account all generally from sixteen to sixty that are healthfull

and strong bodys, both Houfholders and Servants fit to bear Armes, *except Negros and Slaves, whom wee arme not.*" *M. H. S. Coll.*, iii., viii., 336.

The next enactment on the subject was in the brief administration of Sir Edmund Andros. The Act for settling the militia, enacted by this very unpopular Governor and his Council for his Majesty's territory and dominion of New England, March 24, 1687, provided "that no person whatsoever above sixteen years of age remain unlisted by themselves, masters, mistresses or employers." Negroes and Indians are not exempted by any provision of this act; but it is extremely doubtful whether it ever went into practical operation. One of the most obnoxious of his measures was his attempt to control the militia in New England. This is, however, not very important; for after the English Revolution and the establishment of the new Province charter, among the earliest of the laws was the act for regulating the militia—1693—by which Indians and negroes were exempted from all trainings. In Sewall's tract against slavery in 1700 (*ante*, p. 84), he says, "As many Negro Men as there are among us, so many empty places are there in our Train Bands." A later publication in the Boston News Letter, June 10th, 1706, shows that "Negroes do not carry Arms to defend the Country as Whites do," and further, that they could not be employed as substitutes for whites who were impressed or drafted, (*ante*, p. 107.)

A subsequent act for the regulating of free negroes, &c.,—1707—illustrates their exact position more clearly. The recital in the preamble is that

"Whereas, in the several towns and precincts within this province, there are several free negroes, and mulattoes able of body, and fit for labor; who are not charged with trainings, watches, and other services required of her Majesty's subjects; whereof they have share in the benefit," &c.

The act, therefore, provided that they should do service equivalent to trainings, &c., each able-bodied free negro or mulatto so many days' work yearly in repairing of the highways, cleansing the streets, or other service for the common benefit of the place. See *ante*, pp. 60, 61.

In common with all able to bear arms, they were required to make their appearance at parade in cases of sudden alarms, where they were to attend such service as the first commissioned officer of the military

company of their precinct should direct, during the time the company continued in arms. This obviously points to menial service, or, at any rate, a service different from that of the enrolled militia.

This state of things continued down to the commencement of the war of the Revolution, and the first contemporary act shows that negroes could not be legally enrolled at that time. The general militia act of 1775, in providing for the enrolment, excepts "Negroes, Indians, and mulattoes." The act of May, 1776, providing for a reinforcement to the American army, provides that "Indians, negroes, and mulattoes, shall not be held to take up arms or procure any person to do it in their room." The act of November 14, 1776, to provide reinforcements to the American army, excepts "Negroes, Indians, and mulattoes," and the explanatory resolve passed on the 29th of the same month also excepts "Indians, negroes, mulattoes, &c." The resolve in the same year for taking the number of all male inhabitants above fifteen years of age excepts "Indians, negroes, and mulattoes." This census was doubtless taken with a view to the approaching necessity for a draft, and even here they are excluded, although they were apparently included in the poll-lists at the same time—being rateable polls, if not free citizens.

It was only when the pressure of the terrible reverses of the winter of 1776-7 came that they were included in the number of persons liable to draft. The resolve, January 6, 1777, was "for raising every seventh man to complete our quota," and "without any exceptions, save the people called Quakers"—one seventh of all male persons of sixteen years old and upwards. A resolve in August of the same year was similar in its object and character. But this proceeding was not allowed to pass without remonstrance, not by the negroes, but the white men. In the Massachusetts Legislature, March 5, 1778, a petition of Benjamin Goddard in behalf of the selectmen, committee of safety, and militia officers of the town of Grafton, praying that they may be excused from raising a seventh part of the blacks in said town, they being exempt from military duty and free occupants on their own estate, was read, and the petitioner had leave to withdraw his petition.

During the remainder of the war the law appears to have regarded as liable to military duty "any person living or residing in any town or plantation within this State the term of three months together;" but at the same time, although they had the benefit of the example of

Rhode Island in the organization of their famous regiment of negro slaves, an attempt in Massachusetts to authorize the formation of a similar corps "does not appear to have been deemed advisable at the time."

The war came to an end, and, soon after, the very first general militia act, passed March 10, 1785, revived the old feature, and continued the exemption of "negroes, Indians, and mulattoes" from both train-band and alarm-list. In the time of the insurrection in 1786, negroes offered their services to Governor Bowdoin, to go against the insurgents, to the number of seven hundred; but the Council did not advise sending them.

The substance of the next law is the same, although they changed the "way of putting it" by adopting the language of the United States law, in which negroes do not appear among the exempts, but are excluded in the enrolment.

The militia law of June 22, 1793, authorizes the enrolment of "each and every free, able-bodied white male citizen of this, or any other of the United States, residing within this Commonwealth," between the ages of eighteen and forty-five years, save as excepted.

This exclusion from military employment, and the privilege of bearing arms, continued apparently without change until the year 1863, when, by Chapter 193 of the Acts of that year, approved April 27, 1863, the Massachusetts laws were made to conform to those of the United States, which had already recognized and accepted the negro as a soldier.

B. ADDITIONAL NOTES, ETC.

1. *Page 21.* On the 9th of November, 1716, P. M., was presented to the House of Representatives of Massachusetts "a Petition of *William Brown*, son of a Freeman, by a Servant Woman, and has been sold as a slave, and is at present owned by Mr. *Andrew Boardman*, showing that his said Master will set him at liberty, and make him Free, if this Court will indemnify him from the Law relating to the Manumission of Negroes, as to maintaining of him in case of Age, Disability etc., Praying the Court to indemnify him."

On the following day, this Petition was "further considered, and the following Vote passed thereon, viz.: Inasmuch as the Petitioner is a young able-bodied Man, and it cannot be supposed, that he is Manu-

mitted, by his Master, to avoid charge in supporting him, *Ordered*, that the Prayer of the Petitioner be Granted. And that the Petitioner be deemed Free, when set at liberty by his Master, although no security be given to indemnify the Town where he dwells from charge by him, and in case the Petitioner shall hereafter want Support, his said Master shall not be obliged to be at the charge thereof, any Law, Usage, or Custom to the contrary notwithstanding." This order was sent up for concurrence, concurred in and consented to by the Governor on the same day, November 10th, 1716. *Journal H. of R.*, p. 36. *General Court Records*, x., p. 108.

2. Page 51. Massachusetts has enjoyed the distinction of appearing in the first Census of the United States without any slaves among her population.

"The following anecdote connected with this subject, it is believed, has never been made public. In 1790 a census was ordered by the General Government then newly established, and the Marshal of the Massachusetts district had the care of making the survey. When he inquired for *slaves*, most people answered none: if any one said that he had one, the marshal would ask him if he meant to be singular, and would tell him that no other person had given in any. The answer then was, "If none are given in, I will not be singular;" and thus the list was completed without any number in the column for slaves." *Life of Belknap*, pp. 164-5.

Dr. Belknap's own account of this census, written and published in 1795, is as follows:

"In 1790, a census of the United States was made by order of the federal government; the schedule sent out on that occasion contained three columns for free whites of several descriptions, which, in the State of Massachusetts and district of Maine, amounted to 469,326; a fourth for "all other free persons," and a fifth for "slaves." There being none put into the last column, it became necessary to put the *blacks*, with the *Indians*, into the fourth column, and the amount was 6001. Of this number, I suppose the blacks were upwards of 4000; and of the remaining 2000, many were a mixed breed, between Indians and blacks In the same census, as hath been before observed, no slaves are set down to Massachusetts. This return, made by the marshal of the district, may be considered as the formal evidence of the *abolition of slavery* in Massachusetts, especially as no person has ap-

peared to contest the legality of the return." *M. H. S. Coll.*, i., iv., 199, 204.

3. *Page 53.* In 1718, a committee of both Houses prepared a bill entitled "An Act for the Encouraging the Importation of White Male Servants, and the preventing the Clandestine bringing in of Negroes and Molattoes." It was read in Council a first time on the 16th of June, and "sent down recommended" to the House, where it was also read a first time on the same day. The next day it was read a second time, and "on the question for a third reading, decided in the negative." *Journal H. of R.*, 15, 16. *General Court Records*, x., 282.

4. *Pages 54, 90.* The Act of 1705, Chapter 6, underwent some changes in the Council, after it had passed in the House. It was read in Council on Monday the 3d of December, 1705, a first time, "as pass'd in the House of Representatives." The next day it was read a second and third time "with some Amendments and Additions agreed to." On the 5th it was "Read and Voted to be passed into an Act." *General Court Records*, viii., 187, 188, 190.

5. *Page 61.* A draft of Governor Dudley's letter "concerning Indian Captives from Carolina," was presented and approved in the House of Representatives on the 15th of June, 1715. *Journal*, 28.

6. *Page 65.* A recent examination of the collection of Tax-Acts in the possession of Ellis Ames, Esq., of Canton, Massachusetts, enables us to add that Indian, Negro, and Mulatto servants were estimated proportionably as other personal estate, according to the sound judgment and discretion of the Assessors in each and every year from 1727 to 1775, excepting 1730, 1731, 1749, 1750. The acts for these years we have not seen, but it is reasonably certain that the provision was the same as in all the others. That of 1776 was probably similar to that of 1777, in which the Poll-Tax is levied on Male Polls above 16 years of age, including Negroes and Mulattoes, and such of them that are under the government of a Master or Mistress, to be taxed to the said Master or Mistress respectively, in the same manner as Minors and Apprentices are taxed. This method continued to 1791. The act of 1793 omits the mention of Negroes and Mulattoes, taxing "minors, apprentices and servants" *as above*. In 1803, such as are under "the immediate government" of a master, etc. In 1805, the servants are omitted, and there is a separate section concerning minors.

1. Page 94, and note. With reference to the slave's "right to Religion," we should have added a word respecting the peculiar "separation" of the religious people of Massachusetts and their well-known "fear of polluting the ordinances;" to which was ascribed, in this very connection, that neglect of "proper means to make men godly," which became "the misery of New England." *Stoddard's Answer to some Cases of Conscience, etc., 1722, p. 12.* It was the opinion of this writer that "if they (servants) had proper Helps, they might be as forward in Religion, as the *English.*" *Ibid.*

8. Pages 97, 101. Instructions similar to those given to Andros in 1688 (*ante, pp. 51-2, 96*) were repeated to subsequent governors of the various colonies. We have found no act passed in accordance with these instructions in Massachusetts, or any other colony or province excepting New Hampshire; where such a law was enacted, in which the distinction noted in the text between the *Christian* servants or slaves, and the *Indians and Negroes*, is emphatically illustrated. The Province Law of 1718, Chap. 70, is as follows (*Edit. 1771, p. 101*):

An Act for restraining Inhuman Severities.

§ 1. BE IT ENACTED by His EXCELLENCY the GOVERNOR, COUNCIL, and REPRESENTATIVES, convened in GENERAL ASSEMBLY, and it is hereby ENACTED by the AUTHORITY of the same, That for the prevention and restraining inhuman severities, which by evil masters or overseers may be used towards their Christian servants, that from and after the publication hereof, if any man smite out the eye or tooth of his man-servant or maid-servant, or otherwise maim or disfigure them much, unless it be by meer casualty, he shall let him or her go free from his service, and shall allow such further recompence as the court of quarter sessions shall adjudge him.

§ 2. AND IT IS further ENACTED, and ORDAINED by the AUTHORITY aforesaid, That if any person or persons whatever within this province shall wilfully kill his *indian* or *negro* servant or servants, he shall be punished with death.

It is true, that Christian servants were protected in Massachusetts by the earliest law respecting the "liberties of servants" from which the provisions of the first section of the foregoing law were copied; but the relations of the Indian and Negro slaves and their masters were still

regulated in accordance with the contemporary standards of opinion concerning what was morally required by "the law of God established in Israel," or what may be described as the New-English-Hebrew-Christian common or customary law. The familiar phrase—"treated worse than a negro"—is historical in Massachusetts. *Sewall's Diary, October 20th, 1701*, quoted in *Quincy's Harv. Coll.*, 1., 490.

9. Pages 126-28. On the 25th of June, 1766, a petition was presented in the House of Representatives, from Ezekiel Wood, the representative for the town of Uxbridge, setting forth that there were in said town two aged and infirm negroes not belonging there, etc. On the 28th, this petition was dismissed, and a Committee was appointed to bring in a bill at the next session for preventing Fraud in the sale of Negroes. On the 1st of November, in the same year, "a Bill intituled An Act to prevent Frauds in the sale of Negroes" was "read a first time and ordered a second reading on Tuesday next at Ten o'clock." On the 4th, it was read a second time and recommitted for amendment.

The draft of the bill is preserved, as well as the report of the committee. *Mss. Archives, Domestic Relations, 1643-1774, Vol. 9, 449, 450*. It was intended to prevent fraudulent sales made by the original purchasers or owners to persons of no responsibility. Under its provisions, the towns were authorized to bring actions against the next vendor of ability, and each and every vendor from the original purchaser or owner was made liable. In this way the maintenance of the pauper negroes was to be provided for without charge to the towns.

We find no further proceedings on the subject until the 4th of June, 1767, when the "Bill to prevent Fraud in the sale of Negroes and to provide for their maintenance" was read, and the Secretary was ordered to "lay on the Table the Act for laying a duty of Impost on the Importation of Negro or other Slaves into this Province," which he accordingly did. The latter bill, as we have seen, had fallen between the two houses in March previous. Whether it was proposed, at this time, by bringing them together to devise some new movement on the subject of either or both, we cannot ascertain, having found no trace of further action upon them.

C. JUDGE SAFFIN'S REPLY TO JUDGE SEWALL, 1701.

WHILE these sheets are passing through the press, we are kindly favored with the opportunity to make use of this extremely rare and valuable, if not unique tract, from which we copy below. We are indebted to the generous and liberal courtesy of GEORGE BRINLEY, Esq., of Hartford, Connecticut, for this most interesting and important addition to our work. Compare *ante*, pp. 83-88.

“ A Brief and Candid Answer to a late Printed Sheet, *Entituled*, The Selling of Joseph.

“ THAT Honourable and Learned Gentleman, the Author of a Sheet, Entituled, *The Selling of Joseph*, A Memorial, seems from thence to draw this conclusion, that because the Sons of *Jacob* did very ill in selling their Brother *Joseph* to the *Ishmaelites*, who were Heathens, therefore it is utterly unlawful to Buy and Sell Negroes, though among Christians; which Conclusion I presume is not well drawn from the Premises, nor is the case parallel; for it was unlawful for the *Israelites* to Sell their Brethren upon any account, or pretence whatsoever during life. But it was not unlawful for the Seed of *Abraham* to have Bond men, and Bond women either born in their House, or bought with their Money, as it is written of *Abraham*, *Gen. 14. 14. & 21. 10. & Exod. 21. 16. & Levit. 25. 44. 45, 46 v.* After the giving of the Law: And in *Josh. 9. 23.* That famous Example of the *Gibeonites* is a sufficient proof where there no other.

“ To speak a little to the Gentlemans first Assertion: *That none ought to part with their Liberty themselves, or deprive others of it but upon mature consideration*; a prudent exception, in which he grants, that upon some consideration a man may be deprived of his Liberty. And then presently in his next Position or Assertion he denies it, *viz. : It is most certain, that all men as they are the Sons of Adam are Coheirs, and have equal right to Liberty, and all other Comforts of Life*, which he would prove out of *Psal. 115. 16. The Earth hath he given to the Children of Men.* True, but what is all this to the purpose, to prove that all men have equal right to Liberty, and all outward comforts of this life; which Position seems

to invert the Order that God hath set in the World, who hath Ordained different degrees and orders of men, some to be High and Honourable, some to be Low and Despicable; some to be Monarchs, Kings, Princes and Governours, Masters and Commanders, others to be Subjects, and to be Commanded; Servants of sundry sorts and degrees, bound to obey; yea, some to be born Slaves, and so to remain during their lives, as hath been proved. Otherwise there would be a meer parity among men, contrary to that of the Apostle, *1 Cor. 12 from the 13 to the 26 verse*, where he sets forth (by way of comparison) the different sorts and offices of the Members of the Body, indigitating that they are all of use, but not equal, and of like dignity. So God hath set different Orders and Degrees of Men in the World, both in Church and Common weal. Now, if this Position of parity should be true, it would then follow that the ordinary Course of Divine Providence of God in the World should be wrong, and unjust, (which we must not dare to think, much less to affirm) and all the sacred Rules, Precepts and Commands of the Almighty which he hath given the Son of Men to observe and keep in their respective Places, Orders and Degrees, would be to no purpose; which unaccountably derogate from the Divine Wisdom of the most High, who hath made nothing in vain, but hath Holy Ends in all his Dispensations to the Children of men.

“In the next place, this worthy Gentleman makes a large Discourse concerning the Utility and Conveniency to keep the one, and inconveniency of the other; respecting white and black Servants, which conduceth most to the welfare and benefit of this Province: which he concludes to be white men, who are in many respects to be preferred before Blacks; who doubts that? doth it therefore follow, that it is altogether unlawful for Christians to buy and keep Negro Servants (for this is the Thesis) but that those that have them ought in Conscience to set them free, and so lose all the money they cost (for we must not live in any known sin) this seems to be his opinion; but it is a Question whether it ever was the Gentleman’s practice? But if he could persuade the General Assembly to make an Act, That all that have Negroes, and do set them free, shall be Re imburfed out of the Publick Treasury, and that there shall be no more Negroes brought into the Country; ‘tis probable there would be more of his opinion; yet he would find it a hard task to bring the Country to consent thereto; for

then the Negroes must be all sent out of the Country, or else the remedy would be worse than the Disease; and it is to be feared that those Negroes that are free, if there be not some strict course taken with them by Authority, they will be a plague to this Country.

“ *Again*, If it should be unlawful to deprive them that are lawful Captives, or Bondmen of their Liberty for Life being Heathens; it seems to be more unlawful to deprive our Brethren, of our own or other Christian Nations of the Liberty, (though but for a time) by binding them to Serve some Seven, Ten, Fifteen, and some Twenty Years, which oft times proves for their whole Life, as many have been; which in effect is the same in Nature, though different in the time, yet this was allow'd among the *Jews* by the Law of God; and is the constant practice of our own and other Christian Nations in the World: the which our Author by his Dogmatical Assertions doth condemn as Irreligious; which is Diametrically contrary to the Rules and Precepts which God hath given the diversity of men to observe in their respective Stations, Callings, and Conditions of Life, as hath been observed.

“ And to illustrate his Assertion our Author brings in by way of Comparison the Law of God against man Stealing, on pain of Death: Intimating thereby, that Buying and Selling of Negro's is a breach of that Law, and so deserves Death: A severe Sentence: But herein he begs the Question with a *Caveat Emptor*. For, in that very Chapter there is a Dispensation to the People of *Israel*, to have Bond men, Women and Children, even of their own Nation in some case; and Rules given therein to be observed concerning them; Verse the 4th. And in the before cited place, *Levit.* 25. 44, 45, 46. Though the *Israelites* were forbidden (ordinarily) to make Bond men and Women of their own Nation, but of Strangers they might: the words run thus, verse 44. *Both thy Bond men, and thy Bond maids which thou shalt have shall be of the Heathen, that are round about you: of them shall you Buy Bond men and Bond maids, &c.* See also, *1 Cor.* 12. 13. Whether we be Bond or Free, which shows that in the times of the New Testament, there were Bond men also, &c.

“ *In fine*, The sum of this long Haurange, is no other, than to compare the Buying and Selling of Negro's unto the Stealing of Men, and the Selling of *Joseph* by his Brethren, which bears no proportion therewith, nor is there any congruiety therein, as appears by the foregoing Texts.

“Our Author doth further proceed to answer some Objections of his own framing, which he supposes some might raise.

“Obj. 1. *That these Blackamores are of the Posterity of Cham, and therefore under the Curse of Slavery. Gen. 9. 25, 26, 27.* The which the Gentleman seems to deny, saying, *they ware the Seed of Canaan that were Cursed, &c.*

“*Anfw.* Whether they were so or not, we shall not dispute: this may suffice, that not only the seed of *Cham* or *Canaan*, but any lawful Captives of other Heathen Nations may be made Bond men as hath been proved.

“Obj. 2. *That the Negroes are brought out of Pagan Countreys into places where the Gospel is Preached.* To which he Replies, *that we must not doe Evil that Good may come of it.*

“*Anf.* To which we answer, That it is no Evil thing to bring them out of their own Heathenish Country, where they may have the Knowledge of the True God, be Converted and Eternally saved.

“Obj. 3. *The Affricans have Wars one with another; our Ships bring lawful Captives taken in those Wars.*

“To which our Author answers Conjecturally, and Doubtfully, *for ought we know*, that which may or may not be; which is insignificant, and proves nothing. He also compares the Negroes Wars, one Nation with another, with the Wars between *Joseph* and his Brethren. But where doth he read of any such War? We read indeed of a Domestick Quarrel they had with him, they envyed and hated *Joseph*; but by what is Recorded, he was meerly passive and meek as a Lamb. This Gentleman farther adds, *That there is not any War but is unjust on one side, &c.* Be it so, what doth that signify: We read of lawful Captives taken in the Wars, and lawful to be Bought and Sold without contracting the guilt of the *Agressors*; for which we have the example of *Abraham* before quoted; but if we must stay while both parties Warring are in the right, there would be no lawful Captives at all to be Bought; which seems to be ridiculous to imagine, and contrary to the tenour of Scripture, and all Humane Histories on that subject.

“Obj. 4. *Abraham had Servants bought with his Money, and born in his House. Gen. 14. 14.* To which our worthy Author answers, *until the Circumstances of Abraham's purchase be recorded, no Argument can be drawn from it.*

“*Ans.* To which we Reply, this is also Dogmatical, and proves nothing. He farther adds, *In the mean time Charity Obliges us to conclude, that he knew it was lawful and good.* Here the gentleman yields the case; for if we are in Charity bound to believe *Abrahams* practice, in buying and keeping *Slaves* in his house to be lawful and good: then it follows, that our Imitation of him in this his Moral Action, is as warrantable as that of his Faith; *who is the Father of all them that believe.* Rom. 4. 16.

“In the close of all, Our Author Quotes two more places of Scripture, *viz.*; *Levit.* 25. 46, and *Fer.* 34, from the 8. to the 22. *v.* To prove that the people of Israel were strictly forbidden the Buying and Selling one another for *Slaves*: who questions that? and what is that to the case in hand? What a strange piece of Logick is this? Tis unlawful for Christians to Buy and Sell one another for slaves. *Ergo,* It is unlawful to Buy and Sell Negroes that are lawful Captiv’d Heathens.

“And after a Serious Exhortation to us all to Love one another according to the Command of Christ. *Math.* 5, 43, 44. This worthy Gentleman concludes with this Assertion, *That these Ethiopians as Black as they are, seeing they are the Sons and Daughters of the first Adam; the Brethren and Sisters of the Second Adam, and the Offspring of God; we ought to treat them with a respect agreeable.*

“*Ans.* We grant it for a certain and undeniable verity, That all Mankind are the Sons and Daughters of *Adam*, and the Creatures of God: But it doth not therefore follow that we are bound to love and respect all men alike; this under favour we must take leave to deny; we ought in charity, if we see our Neighbour in want, to relieve them in a regular way, but we are not bound to give them so much of our Estates, as to make them equal with our selves, because they are our Brethren, the Sons of *Adam*, no, not our own natural Kinsmen: We are Exhorted *to do good unto all, but especially to them who are of the Household of Faith,* Gal. 6. 10. And we are to love, honour and respect all men according to the gift of God that is in them: I may love my Servant well, but my Son better; Charity begins at home, it would be a violation of common prudence, and a breach of good manners, to treat a Prince like a Peasant. And this

worthy Gentleman would deem himself much neglected, if we should show him no more Deference than to an ordinary Porter : And therefore these florid expressions, the Sons and Daughters of the First *Adam*, the Brethren and Sisters of the Second *Adam*, and the Offspring of God, seem to be misapplied to import and insinuate, that we ought to tender Pagan Negroes with all love, kindness, and equal respect as to the best of men.

“By all which it doth evidently appear both by Scripture and Reason, the practice of the People of God in all Ages, both before and after the giving of the Law, and in the times of the Gospel, that there were Bond men, Women and Children commonly kept by holy and good men, and improved in Service ; and therefore by the Command of God, *Lev.* 25, 44, and their venerable Example, we may keep Bond men, and use them in our Service still ; yet with all candour, moderation and Christian prudence, according to their state and condition consonant to the Word of God.

“The Negroes Character.

“*Cowardly and cruel are those Blacks Innate,
Prone to Revenge, Imp of inveterate hate.
He that exasperates them, soon espies
Mischief and Murder in their very eyes.
Libidinous, Deceitful, False and Rude,
The spume Issue of Ingratitude.
The Premises consider'd, all may tell,
How near good Joseph they are parallel.”*

By the same *Writer* :

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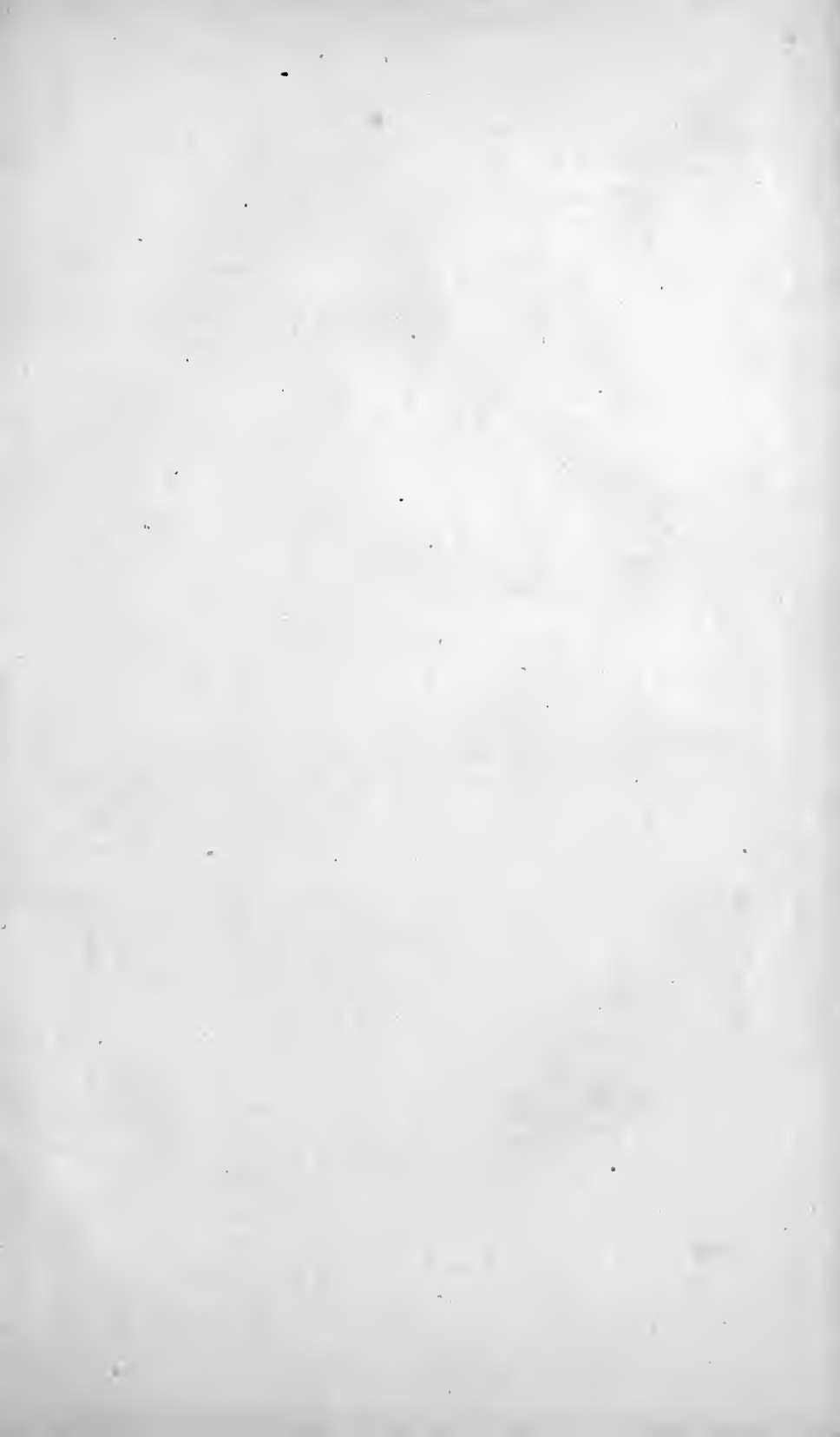
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John W. C. Alexander:

From GEO. H. MOORE,
NEW-YORK HISTORICAL SOCIETY,
New York City.

ADDITIONAL NOTES

ON THE

History of Slavery in Massachusetts.



SLAVERY IN MASSACHUSETTS.

MR. MOORE'S REPLY TO HIS BOSTON CRITICS.

"Pudet haec opprobria vobis
Et dici potuisse, et non potuisse refelli."

To the Editor of the Daily Advertiser :*

When Aristeidês was requested by his ignorant and unknown fellow-citizen to write his own name on the shell, in order that he might receive the compliment of ostracism, we read that he did so, without a word, after hearing the reason for the request. If he had argued the point, the story would have lost its brightest feature. And if he had been himself the chief trumpeter of his own fame, making the States of Greece ring with the echoes of his own sonorous self-esteem, the whole tale might have had a different moral. As it is, I see no impropriety in the suggestions of Mr. Grote, that "the purity of the most honourable man will not bear to be so boastfully talked of, as if he were the only honourable man in the country; the less it is obtruded, the more deeply and cordially will it be felt, and the story just alluded to, whether true or false, illustrates that natural reaction of feeling produced by absurd encomiasts, or perhaps by insidious enemies under the mask of encomiasts, who trumpeted forth Aristeidês as *The Just man of Athens*, so as to wound the legitimate dignity of every one else."—*History of Greece*, IV. 461.

The modern champions of Massachusetts, glittering in historic brass, have assiduously challenged comparisons with all her contemporaries in all periods of their respective history. I have furnished, in my volume on *Slavery in Massachusetts*, the materials for a comparison between the facts of her history and the pretensions which have been set up by her historians, on that topic alone.

Is it my fault if the sharp contrast of the truth with the false pretence strikes like satire? if the simple, straightforward statement of facts, amply sustained by due reference to unquestionable authorities, sounds like an indictment? The indictment if any must be found not against Massachusetts, but those who through ignorance or design have so utterly misrepresented this portion of her history hitherto. The just fame

of Massachusetts cannot be diminished; in it her children have an inheritance, which is a possession forever. Its glory is only obscured by false lights. Massachusetts has no reason to shrink from the truth, whether her self-righteous historians can bear to face it or not. Her part in the earlier, as well as later history of American Slavery will no longer be obscure; and the efforts of the earliest champions of Human Freedom within her borders will no longer be concealed because they were unsuccessful. The faithful witness to the truth that is in history will not be intimidated by abuse, nor restrained from telling the whole truth, lest her enemies may be glad, or the multitude of the uncircumcised rejoice. She is far more likely to suffer from the cowardice of her friends than the courage of her enemies. But this is no new phase of historical sensitiveness in Massachusetts. When that pious Independent, Daniel Neal, wrote his famous history of New England, a century and a half ago, he disappointed the most godly by "taking merely the task of a historian upon him" instead of writing the lives of the Puritan saints, and narrating the marvels of their Christian experience, in humble imitation of Cotton Mather's *Magnalia*. And "the freedom" he took "to expose the persecuting principles and practices of the first planters, both in the body of the history, and his abridgment of their laws" was "displeasing" and "offensive" to some in England, and probably more in Massachusetts. The venerable Dr. Watts took upon himself the duty of remonstrance, and told the historian he "could wish he had more mollified some of these relations, and had rather left out those laws, or in the same page had annexed something to prevent our enemies from insulting" the brethren "on that subject." His answer was—says Dr. Watts himself, in a letter to Cotton Mather—"THAT THE FIDELITY OF AN HISTORIAN REQUIRED HIM TO DO WHAT HE HAD DONE," adding, "THAT IT IS A NOBLER THING TO TELL THE WORLD THAT YOU HAVE RECTIFIED THE ERRORS OF YOUR FATHERS, THAN IF MERE EDUCATION HAD TAUGHT YOU SO LARGE A CHARITY." The good Psalmist, in communicating Neal's manly reply, also ventured

* The Editor of the *Daily Advertiser* having declined the publication of this reply to his strictures in consequence of its length, it appears in the *Historical Magazine* as an original contribution.—ED. HIST. MAG.

some practical advice to his Massachusetts friends which he thought would tend to promote "a happy effect of that part of the history which now makes us blush and ashamed."—*M. H. S. Coll.* 1. v. 200.

It is a remarkable fact that the chief champions of the Puritans in these days are men who reverse the ordinary methods of demonstrating the integrity of their subject. They start with the conviction that the theories of religion and morals, if not of politics and society, of their ancestors were entirely wrong, but their lives and actions were almost invariably right. The modern Massachusetts Christian, whose entire intellectual being is nothing if not ultra-protestant and liberal, with no starting-point of protest but the last results of Puritan Orthodoxy, and no limit to his liberality short of spiritualism or absolute infidelity—builds his historic Valhalla out of the old walls of the New England Jerusalem, and fills it with images of the grim heroes of Puritanism.

And their stern lineaments show but shabbily in the straw-stuffed canvas, which the new school of Puritans bear about in their solemn processions, like the wax figures with which the Romans in the days of their degeneracy were wont to inflame the imaginations of the mob. It is the peculiar province of a just historical criticism to demonstrate the fallacy of those subjective processes in reasoning by which the theories of the present day are translated into the remote past, and the Fathers of New England are glorified for thoughts and feelings absolutely impossible to them, and justified for their actions by principles from which they would have shrunk in horror, as impious, blasphemous, and utterly wicked.

The *old* Puritans were the genuine—and their history is not wanting in examples of that magnanimity which submits to just reproof without resentment, and that higher grace which is at once the sign and the blessing of repentance—that real Christian courage which could humiliate itself by confession.

SAMUEL SEWALL, whose fame is justly though imperfectly celebrated in my book, as the first Massachusetts abolitionist, was also a judge in that bloody Assize of Witches at Salem, and his voluntary confession before God and men of his sin in that thing, ought to be cherished as one of the most precious memorials of the history of Massachusetts. That solemn sad figure, handing the confession to his minister "as he passed by" in the meeting-house, "and standing up at the reading of it, and bowing when finished in the afternoon" of that winter's day, is to me personally more beautiful and glorious than all the heroes of the Magnalia. Yet Cotton Mather, and all the other trumpeters, whether trumpeters of silver or trumpeters of brass, are most seen

and heard throughout all the generations of New England.

History will one day demonstrate that they were not the men who did the "generation-work" so near to the hearts of the Fathers, and not yet wholly forgotten by their true children. And History must now reject with scorn the "fables agreed upon," for the question of which I have been denounced as "the Devil's advocate, opposing the canonization of Massachusetts!"

I. The first division of the exceptions taken by my critic is somewhat miscellaneous, but I follow his discourse. He thinks it does not appear that the negroes who formed a part of the return cargo of the "Desire" in 1638, were imported by "the authorities"—nor that the Indian captives were disposed of according to "previous practice." It is clear, from all the documents, that "the authorities" controlled the disposition of these captives "whom the Lord had delivered into their hands" in that bloody war against the Pequods,* and Winthrop himself invariably says, "We sent them to Bermuda," etc. Is the inference improbable that the same authorities who shipped them out for sale or exchange were interested in the proceeds, whether "cotton, tobacco, negroes," or "etcetera?" The sales made by Pierce must have been like those in 1675, "on the country's behalf." "We" sent them, and "we" undoubtedly received the returns.† It was at a much later period of the history of Massachusetts that the laws were passed to encourage private as well as public enterprises against the "Indian Enemy and Rebels." In these acts, a strong discrimination was made in favor of volunteers, although the soldiers in regular pay were amply provided for. In 1694, volunteers were to have for every Indian, great or small, which they should kill, or take and bring in prisoner, 50 pounds, as well as all plunder. Soldiers under pay were to receive, over and above pay, 10 pounds. In 1695, "the reward for any Indian woman or young person judged to be under the age of 14 years that shall be killed or taken and brought in prisoner, shall be henceforth 25 pounds and no more." In 1697, fifty

* Wood refers to these in 1633. "The Pequants be a stately warlike people of whom I never heard any misdemeanor; but that they were just and equal in their dealings; not treacherous either to their countrymen or English, requiters of courtesies, affable towards the English." *N. E. Prospect*, Ed. 1764, p. 72. Four years afterwards they were exterminated by the Puritans! Those who escaped the sword, were sold into slavery, in foreign parts! Yet Winthrop himself said (in 1643) that "they had done us no injury."

† In the war against the Narragansetts, etc., Captain Mason's Commission (July, 1645) concludes thus, "What booty you take or prisoners, whether men, women or children you may send them to Seabrook fort to be kept and improved for the advantage of the Colonies, in several proportions answering their charge," etc. *Plymouth Records*: 1X. 35. Hazard: II. 31.

pounds were to be paid for the scalps of adult Indians, and "for every Child of the said Enemy, under the age of Ten years, that shall be by them slain, the sum of Ten Pounds, and that such Party or Parties shall also have and keep unto their own use all Plunder and prisoners by them taken of the enemy." This appears to have been the earliest resignation by the Provincial Government of their sovereign right to prisoners and captives. In the later laws, liberal premiums continued to be offered for the scalps of male Indians above the age of 12 years, as well as "the benefit of all Indian Prisoners, being Women and Children under the age above said," subject only to the condition that they should be "Transported out of the Country." *Mass. Laws: 1694-1722.*

But to return—as to the doubt concerning Lieut. Davenport's charge, the reader must take his choice of the probabilities suggested. Whether there had been more or less "previous practice" is not very material. I do not know that it would better their case, if it could be shown whether John Winthrop and his associates were the first to commence it or not, or that they did not begin until 1637. The fact is indisputable that they did so then; and that this was not an isolated, solitary instance—the law of 1646, providing for the export for trade of Indians for negroes, bears emphatic testimony—as well as to the further fact denied by my critic—that the trade was followed up. To support this denial, he cites Bradstreet's report to the Lords of Trade in 1680—that there were but 100 or 120 slaves in Massachusetts, of whom 40 or 50 had been imported two years before. To say nothing of the obvious imperfections of this report, does my critic suppose that the "Desire" brought 60 or 70 negroes from Providence Island in 1637-8, who all lived to be counted in this enumeration of 1680-2, or does he acknowledge that the losses by death were more than made good by the increase of these chattels—by such as were "born in the house?"

Admitting the facts which I demonstrated that slavery existed as a social fact in Massachusetts almost from the beginning of the Colony,* and that its legislative history dates from the Statute of 1641—my critic indulges in a little fault-finding with my use of the word "established." He confesses his ignorance how that which had previously existed, as unwritten law could "in any sense" be established by a statute. I claim no

credit for superior wisdom, when I declare my belief that the formal enactment into a statute or declaration of fundamentals in the form of liberties by the competent legislative authority must be regarded as "establishing" the doctrine thus promulgated. I never referred the *origin* of negro slavery in Massachusetts to this or any other legislative enactment. Probably there is not an instance to be found in all history of its being originated by statute. But it is equally true that all history may be challenged to produce a nearer approach to a statutory introduction of slavery than the Massachusetts law of 1641, by which it was established. My statement, therefore, is strictly correct. It was "the first statute establishing slavery in America."

In view, however, of the admissions of my critic, I cannot resist the temptation to inquire what has become of the theory so long, so steadily and so recently maintained in Massachusetts, that slavery is "so odious that nothing but positive law will support it?"

II. But however doubtful of the effect of the Act of 1641 in establishing slavery, my critic finds great satisfaction in contemplating its authority as a "provision explicitly in favor of liberty," and expressly "limiting the original law of slavery." Now, what were the limits to which the prophetic wisdom of the framers of this law restricted this ancient evil? Establishing the institution under a convenient and comprehensive exception, they admitted the slavery of three specified classes, viz.:

1. Lawful captives taken in just wars,
2. Such strangers as willingly sell themselves,*
3. Such strangers as are sold to us:

and added the significant proviso, after promising all the liberties and *christian* usages which the *Jewish* law seemed to them to enjoin, that all this should exempt none from servitude who were judged thereto by authority. This law was subsequently amended. Whether the motive suggested for the omission of the word "strangers" be correct or not, the fact is beyond dispute. It cannot easily be determined what was the intention or practical effect of the omission; but whether by "strangers" they meant to distinguish those not born in the land, or those who were "strangers" by race, as has been suggested by my friend Mr. JOHN C. HURD (whose authority I am glad to see recognized in Boston), it is not necessary to decide at present.†

* There are traces of the presence of negro slaves in Massachusetts as early as 1633. See *Wood's N. E. Prospect, Ed. 1764, p. 91*, with reference to the fright of certain Indians, "worse scared than hurt, who seeing a blackmore in the top of a tree looking out for his way which he had lost, surmised he was Abamacho or the devil: deeming all devils that are blacker than themselves; and being near to the plantation, they posted to the English, and intreated their aid to conjure this devil to his own place, who finding him to be a poor wandering blackmore, conducted him to his master."

† It is not improbable that in some instances this consent was like that of the Gibeonites—if not willingly, then by compulsion as the alternative.

† Cotton Mather (*Magnalia, Book VI, Chap. vi., Section 1*) furnishes an illustration of the status of "Foreigners and Strangers." In his sketch or account of the Indians, he mentions an inferior class, whom he calls a sort of Villains, who had been for many generations "known to be Strangers or Foreigners, who were not privileged with common right, but in some measure subject," etc.

All the effect of limitation now claimed for this famous "provision explicitly in favor of liberty" is that it did not provide for slavery by birth—only this and nothing more—that the law "does not cover hereditary slavery, either by express terms, or necessary implication." And I am challenged with an air of triumph, to point out the words extending slavery to the children of slaves.* Now, the fact is undisputed that by the recognized common law of nations, as well as the civil law, and what is more to the purpose here, by the Jewish law—the natural increase of slave property belonged to the owner, whose right to it was never questioned any more than his right to his calf or his colt. Nobody supposed that the child of a slave was born free, or that the young of domestic animals were *feræ naturæ*. The issue of slaves were unquestionably at that time among "such as were sold" commonly and constantly, and if their condition had been at any time brought to the test of judicial decision, there is no room whatever for a doubt what it must have been "adjudged" to be "by authority." But there is not a particle of evidence to show that the matter was ever thought of as questionable. I have quoted in my book the statement of Salstonstall of Connecticut in 1704, in which he declares that "according to the laws and constant practice of this colony and all other plantations (as well as by the civil law) such persons as are born of negro bond-women are themselves in like condition, that is, born in servitude, nor can there be any precedent in this government, or any of her Majesty's plantations, produced to the contrary." I have given a more signal illustration in the semi-judicial action of the legislature of Massachusetts in 1716, in the case of William Brown, the son of a Freeman by a Servant Woman, who had been sold as a slave. His master offered to give him his freedom—if the Court would indemnify him from the law relating to the manumission of negroes—the law of 1703, in restraint of emancipation. None of the learned lawyers of that day in the legislature ventured the suggestion that he

* There was yet another description of slaves for which I omitted before to challenge a lawful place in my classification. Perhaps my critic will thank me for calling attention to it. Fugitive slaves sometimes preferred freedom among the savages to servitude among the Christians. This of course led to demands upon the children of the forest, by which they were required to send back the runaways. Failing to obtain a prompt compliance in all cases, the General Court, on the 2d of June, 1641, passed an order by which, "It is declared to bee the mind of the Co^t. that if the Indians send not back o^r run aways then, by commission from the Govⁿo^r and any 3 of the magist^rs to send and take so many as to satisfy for the want of them, & for the charge of sending for them," *Mass. Records*: I. 329. Thus they might "give commission to any master to right himself upon the Indians, for his fugitive servant." *Winthrop's Answer, &c. in Hutchinson's Collection*: p. 124, also, in *Hazard*: I. 509. Should such be considered as "lawful captives taken in just wars," or simply as "judged to Slavery by authority?"

was "by law free." Neither lawyers nor judges, of whom there were several in the House of Representatives and Council, could see any mode of relief but the act of indemnity prayed for, which was duly passed. The facts present the same phase through the entire colonial and provincial era down to the time immediately preceding the Revolution, when slavery was first formally challenged in Massachusetts. And among the most prominent and wisest suggestions then made was that of providing by legislation for the emancipation of the children of slaves—whose condition under the existing laws was thus undeniably admitted to be that of slavery; and in 1777, in the most emphatic, if, indeed, it was not the only, direct attack on that institution in all the legislation of Massachusetts—the recognized doctrine of hereditary slavery was included in the denunciations of the law which was proposed.

But "the question as to the legality of hereditary slavery has been the subject of judicial consideration"—and it is in this part of the subject, that I am treated with specific charges of "suppressing inconvenient authorities," "pre-ferring convenience to honesty," "violating the record," and what is perhaps regarded as equally discreditable if not criminal, I am given to understand that my presumption in questioning standard authorities in Massachusetts is painfully conspicuous. It is my present purpose to show that the accusations of suppression, misrepresentation and dishonesty are utterly without foundation—and at the same time to vindicate the justice of my previous criticism of the authorities in question. And here I must be permitted to say that I am unable to find in my book any "degree of acerbity" towards the distinguished gentlemen from whose views I have been obliged to differ. If they have done me the honor to read the work, I am quite certain they must be as much astonished as I am to learn from my critic that I have transgressed the limits of a proper courtesy and due respect. If I have anywhere deviated into a way "foreign to the spirit of historical investigation," I am ignorant of the fact as well as the intention. If my critic had been as cautious as I was, his high tone on this point would be more in harmony with his own performance.

There is no pretence that the legality of hereditary slavery was ever formally questioned, much less denied by any contemporary authority, private or public, legislative, judicial or executive, during the period in which the institution flourished in Massachusetts. If among the earlier cases (between 1766 and 1774) in which the general subject of slavery was involved, there was one in which the modern doctrine was declared by anybody, on or off the bench, it has escaped all my research. The case of *Newport*

vs. Billing in 1768, presents the most positive and emphatic record as to the legal condition of the negro who attempted to obtain his freedom by process of law, and if it could be ascertained that he was a native of Massachusetts, would be decidedly "a case in point." I have only been able to learn that he was a young Negro Boy on the 15th of March, 1728-9, when he was purchased by Billing for £50. It was found by the highest court in Massachusetts, on appeal from a similar decision in the inferior court "that the said Amos [Newport] was not a freeman, as he "alleged, but the proper slave of the said Joseph [Billing.]" *Records: 1768, Vol. 284.*

But the judicial oracles to which we are to go for instruction with authority on this topic belong to a much later period. The first in the series of these modern cases, which are claimed to have settled what the ancient law of slavery was, is that of *Littleton vs. Tuttle*, in 1796. It is reported "in part" (as Dane says) in a note to C. J. Parsons' decision of the case of *Winchendon vs. Hatfield*, 4 *Mass.*, 128. The decision in the latter case was made at the March Term, in Suffolk, in 1808, and it was published in 1809. The subject of the former suit was a pauper negro, born of slave parents, in 1773, sold in 1779 by the owner of his mother, to the defendant in the suit, who retained him in his service until he became lame and unable to labor, at the age of 21 years, January 18th, 1794, when he carried him and left him with the overseers of the poor for support. The record of the case shows simply that the town brought an action of assumption against the master, which resulted in the recovery of costs by the defendant. *Records, 1796, 302.*

It is stated in the partial report above referred to, that "the Court stopped the defendant's counsel from replying, and the Chief Justice charged the jury, as the unanimous opinion of the Court, that Cato [the pauper] being born in this country was born free; and that the defendant was not chargeable for his support after he was 21 years of age. And the jury found a verdict accordingly, without going off the stand."

There is an earlier report of this case furnished by James Sullivan, Attorney-General, who was of counsel in the case, for publication in 1798. It is a noticeable fact that he does not state that the judges declared the negro to have been born free. His statement is that "the judges were of opinion that, as he was born in the town, he was a proper inhabitant, and that the town was obliged to maintain him, as it would have been if he was a white man." *M. H. S. Coll., I. v. 47.*

Nathan Dane, too, in his statement of this case, speaks of it as reported "in part" only, in 4 *Mass.*, 128, and adds the remark that "the idea in this case, of the defendant, was that Jacob

"was the slave of his mother's master, not the father's master; and the same idea is stated by Parson, C. J., in *Winchendon vs. Hatfield*." *Abridgment, II.*, 413. Both parties to the suit must have been equally astonished at the opinion of the Court.

The next case in the order of time is that of *Perkins vs. Emerson*, tried in Essex in 1799. My critic does not take this in order, although he "affects" disappointment with my notice of it. His language is worthy of examination here. Beginning with the expression, "Mr. Moore's brief note of it," he soon regards it as "Mr. Moore's broad statement," which is presently converted into "Mr. Dane's loose statement," and this at last into "Mr. Dane's broad statement." Now the statement is true, and Mr. Dane's summary, which I followed, is not (as my critic alleges) "incorrect"! and the charges of ignorance on the part of Mr. Dane, and dishonesty in the use of the MS. Record by myself, are equally groundless. That Nathan Dane, who was of counsel, and was defeated, should not have known or could have forgotten what was decided in the case, is preposterous; and he not only gives the summary as I quoted it, "correctly," but he expressly contrasts it with the decision in *Littleton vs. Tuttle*. *Abridgment, II.*, 412. Again, in another place, he refers to it, where he says of the Act of 1736, "This Act extended not to slaves," citing *Perkins vs. Emerson*. *Abridgment, II.*, 417. And yet again, after he had seen the new light of the decision by Chief Justice Parker, in *Lanesborough vs. Westfield*—in his continuation of chapter 53, Art. I., Section 21, giving a summary of that case from 16 *Mass.*, 74, he adds: "See S. 23-25, the case of *Perkins, Treasurer, vs. Emerson*, was three years after the case of *Littleton vs. Tuttle*. *Abridgment, Vol. IX., Supplement, p.* "190."

James Sullivan also was of counsel with Nathan Dane, for the appellant. He had been counsel for the plaintiff in the previous case of *Littleton vs. Tuttle*. As for Chief Justice Parsons, whether he remembered the case or not, he declared the doctrine of it most distinctly, not only in the "desperate suggestion" that "the issue of the female slave (according to the maxim of the civil law) was the property of her master," but in the express statement that *slaves* were not within the statute of 10 Geo. II., c. 3 (the Act of 1736). 4 *Mass.*, 129. That he does not refer to the decision of 1799, in support of either point, does not weaken his opinion—of which I have more to say hereafter.

But all my critic's reasoning from probabilities is utterly futile and worthless; as I now propose to show from the record itself, independently, without reference to Dane or Parsons, whose evidence he discredits.

The court declared that the pauper in question in this suit was "not within the meaning of the 'act.'" The act made any inhabitant responsible for any person not an inhabitant whom he should admit or entertain in his house for more than twenty days without the prescribed notice, etc.: and the description of persons among whom she was denied a place by the Court is not limited, as my critic represents, by the words inmate, boarder or tenant, but includes all non-inhabitant persons whatever "under any other qualifications." She was certainly not an inhabitant, and the decision of the Court therefore in terms excluded the pauper in question from recognition as a person under any qualification whatever! And, so far from having been misunderstood, misrepresented, exaggerated, garbled, or otherwise maltreated by Nathan Dane or myself citing his authority, it fully sustains the doctrine of hereditary slavery in Massachusetts. How far short is it of a declaration that, instead of having been free-born because born in Massachusetts, this child of slaves was not a "person" in the eye of the law? An absolute formal denial of that character of personality which would distinguish her from a *thing*? Attributing to her that peculiar legal incapacity for rights which belongs to the nature of a *thing*? so that she could be the object of the rights of persons, but not the subject of rights? She was not a person *sui juris*! She was a chattel-slave! She could not be separated from her owner, and removed by the selectmen of the town, any more than his horse, or his cow, or his hog!

In all the judicial history of America, perhaps of the world, it may well be doubted whether a parallel can be found for this decision of the Supreme Judicial Court of Massachusetts in the last year of the eighteenth century. Is it strange that it has been studiously kept out of sight by the historico-legal champions of the Old Bay State?

The remarks of Chief Justice Parker, in deciding the case of *Andover vs. Canton*, in 1816, state so clearly the recognized doctrine of the slave's incapacity for civil rights in Massachusetts, that I quote them at this point, although I have to refer to the case again in its order. He said with reference to a slave in Massachusetts during the period in which slavery existed there: "*The slave was the property of his master as much as his ox or his horse; he had no civil rights but that of protection from cruelty;** he could acquire no property nor dispose of any without the consent of his master. His settlement in the town with his master was not for his

"benefit, but to ascertain what corporation should be charged with his maintenance, in case his master should become unable to support him, or should die, leaving him a charge to the community. We think he had not the capacity to communicate a civil relation to his children, which he did not enjoy himself, except as the property of his master." 13 *Mass.*, 550. This is not Chief Justice Taney who is speaking, neither is this the language of the Dred Scott decision, but it is the language of the Chief Justice of the State of Massachusetts, declaring the opinion of the Supreme Judicial Court, sitting in bank, forty years before!

The next case in the order of time is that of *Winchendon vs. Hatfield*, 4 *Mass.*, 123, which is so little to the taste of my critic, that he not only denies it place as a leading case, but disposes very summarily of Chief Justice Parsons, whose *dicta* are not to be regarded on this topic, excepting as "desperate suggestions" or "loose statements." I am happy to differ from this opinion. No man was more thoroughly versed in the early history, laws, institutions, manners and local usages of the early settlers of Massachusetts than this honored and conspicuous "Giant of the Law." No man knew better than he did what was the law of slavery in his native State. And when he declared in this case, that "the issue of the female slave, according to the maxim of the civil law, was the property of her master," he was careful to introduce the unanimous opinion of the Court in 1796, and to brand it as spurious—"certainly in opposition to the general practice and common usage." He spoke the truth, candidly and sincerely, for he loved it. He belonged to the old school of lawyers and judges, and never learned the dialect of the later Euphemists, or the ritual of the modern Brahmins of Massachusetts.

The next case is that of *Andover vs. Canton*, 13 *Mass.*, 547, in which Chief Justice Parker confirmed the doctrine of hereditary slavery in Massachusetts. His caution (to which I referred in noticing this case in my book) was due to the doubt, not whether the children of slaves were slaves but whether they were the property of the owner of father or mother. The manner in which this case is treated by my critic "seems" vastly like "dissembling." I did not quote or refer to the *semble* as authoritative, but to the Chief Justice's unqualified declaration, after the very emphatic statement before quoted of the slave's incapacity for civil rights in Massachusetts, that "his children, if the issue of a marriage with a slave would immediately on their birth, become the property of his master, or of the master of the female slave." *Ibid.*: 551.

I cannot wonder at my critic's alacrity in getting over this dangerous footing, to what he re-

* This was a "civil right" which the slave enjoyed in common with "any brute creatures, which are usually kept for the use of man," the latter being protected by a special statute against cruelty. *Laws* 1672, p. 39.

garded as "firmer ground;" but I must say, with due deference, that, as he could not have been misled by my caution or my reference to that of the Chief Justice, I am surprised at his eagerness to charge me with tripping, or something worse, so soon after his own fall over this *semble*. But he will find it difficult to make anybody else take up his hue and cry in this instance, or fix on me as the proper object of pursuit. I bear with me neither the consciousness nor evidence of guilt.

It is in the case of *Lanesborough vs. Westfield*, 16 *Mass.*, 74, that my critic finds "firmer ground." In fact, he "seems" to rest and breathe more freely. But his first blow is foul! as he renews the attack. His principal charge of suppression is with regard to this case, which I do "refer to" and "cite by page" as one of the principal authorities relied on by Mr. Sumner, Mr. Palfrey and Mr. Gray, in their statements on this subject. If I had given no reference whatever, I could not recognize the justice of the charge so offensively made; and I sincerely regret that my critic could invent no better motive for me than sheer dishonesty. If I was guilty of any error in this part of the subject, it was in failing to show that the new interpretation of the law of 1641 first dawned upon the historico-legal mind of Massachusetts in 1819, in this very case!

It was the case of a certain pauper negro woman and her child, which was made to depend on the condition of her mother. She was born in 1778, continued in the family of her mother's owner till the formation and adoption of the Constitution of the Commonwealth. How much longer does not clearly appear, but she remained in the same town (Westfield) until 1803, without acquiring any legal residence. She removed to Lanesborough in 1803, was married in June, 1804, and dwelt in the latter place until the time the action was brought which was to determine the main question in this as in all these suits—who was to support these negro paupers? On this state of facts, Chief Justice Parker declared the opinion of the Court, as follows:

"By the colonial law of 1646, no bond slavery could exist except in the case of lawful captives taken in just war, or such as willingly sold themselves, or were sold to the inhabitants (*Vide Ancient Charters, &c.*, 52). Of course, the children of those who in fact were, or who were reputed to be slaves, not coming within the description, could not be held as slaves. And in the year 1796, it was solemnly and unanimously decided by the Court, that the issue of slaves, although born before the adoption of the Constitution, were born free. 4 *Mass., Rep.* 128, *note, Littleton vs. Tuttle.*"

It will be observed that in this decision the

Chief Justice has changed his base, and occupies a position considerably in advance of that which he occupied at the termination of the action in Essex, November Term, 1816—*Andover vs. Canton*.

An examination of his authorities gives us a clue to the motive as well as support of his advance. The "Ancient Charters, &c.," edited by a commission of whom "the venerable legal antiquary," Nathan Dane, was the Chief, was published under the authority of the legislature in 1814. In its pages was reproduced for the first time in a century and a half the Massachusetts statute of Slavery. This law was sandwiched in one and the same separate chapter between an act respecting the assignment of bills, and the famous order of the General Court in 1646, for the restoration to his native country of a kidnapped African. It is proper to add here that this special order was never printed among the Colony Laws by those who made it, or at any time afterwards, until in this collection as above stated. The language of the Chief Justice, however, shows conclusively that he was influenced by this new combination, for he refers the law of 1641 to the year 1646, and evidently gravitates towards the mild views of interpretation adopted by the index-maker of that volume, whose summary of "the whole law, as given in the Index, is "Slavery forbidden."*

This is the only new light indicated in the opinion, for the decision of 1796 was before him, when in *Andover vs. Canton*, he not only acquiesced in the law of his predecessor, but his open disregard, if not undisguised contempt, of that decision. Both were undoubtedly well aware that it had been authoritatively and unquestionably reversed by the same judges who made it, in their careful settlement of the law in the decision of 1799, which I am still obliged to regard (notwithstanding the sneer of my critic) as "a notable instance of judicial retraction."

But my critic adds still another Ossa upon Pelion to the vast "weight of legal authority" on this point. In the case of *Edgartown vs. Tisbury*: 10 *Cushing*, 408, Mr. Justice Metcalf has "followed his leader"—in Bristol, Plymouth, &c., October Term, 1852. The facts in this case were entirely clear, and embarrassed by no doubt. The daughter of an unmarried female slave,

* As my critic derives some comfort from such little helps, and refers to the marginal note in the Edition of 1672, "No Bond-slavery" as an "epitome" of the law of slavery in Massachusetts, I will add to his collection of "epitomes" by the information that, although the Edition of 1660 gives no marginal note whatever and the Index reference is simply the title itself and number of pages where found—in that of 1672, not only the words "No Bond-slavery" appear in the margin, but the Index reference is the title, with an addition, as follows: "Bond-slavery, not allowed, but servitude declared." Perhaps a judicial determination may yet be obtained that slavery had no legal existence in Massachusetts after the publication of that Index!

born in 1772, upon the death of her mother's master, in 1778, was included in the inventory, and appraised and sold at auction, as a part of his property. She was taken away by the purchaser on the day of the auction and continued with him several years. With these facts before him, Mr. Justice Metcalf said:

"As she was born in Massachusetts, she was freeborn, although her mother was a slave, and she could not be held as a slave by Allen [the purchaser at the auction, as above] under the sale made to him. The relation of master and slave never existed between Allen and the pauper." The authorities are *Littleton vs. Tuttle*, 4 Mass., 128, note. *Lanesborough vs. Westfield*, 16 Mass., 74. 2 *Dane's Abridgment*, 211-13. 2 *Kent Com.* (6th Ed.) 252. The last is the only new one. In the passage referred to, Chancellor Kent quotes the decision in *Littleton vs. Tuttle*, and adds—"But, though this be the case, yet the effect of the former legal distinctions is still perceived, for by statute [not repealed until 1843] a marriage in Massachusetts between a white person and a negro, Indian or mulatto, is absolutely void."

Such are the records—such are the authentic reports. In the face of such facts, what are the later decisions and opinions worth? To what extent can such authorities be held to govern either law or history? Is a question of history the same thing as a question of law, and exclusively a matter of judicial determination? The conspicuous jurists of the Boston school ought to know that on a matter of history the opinion of a Judge, even on the bench, is of no authority, but at best is only evidence to be weighed as such. If it be presumption in me to remind them of this fact, I must take the consequences. If I should be crushed under the weight of such legal authorities, it certainly will be "in spite of my conviction of the unreasonableness of their conclusions." There may be force in my critic's suggestion of something more than indifference among the Puritans to the principles of the laws of heathen Rome. But the more recent magnates of the profession as well as some of the "Apprentices to the Bench" in Massachusetts appear to have extended their inquiries into the Civil Law far enough to learn one important maxim said to be derived from it—"boni iudicis est ampliari suam auctoritatem"—it is the business of a good judge to enlarge his authority. But are we to receive our history as well as law from the Bench? Jeremy Bentham thought it more than enough that the Judges should make law as well as declare it. What would he say to the "conspicuous judicial instincts" of Massachusetts, whose opinions are to be not only law but history? "Instinct is a great matter." And no man who is familiar

with "the way of putting it" in Massachusetts can doubt for a moment that the champions of her historic fame are subjected, not less than inferior tribes, to the influence of certain fixed impulses or active tendencies, which, like the instincts of animals, are constant and invariable. It does not by any means follow that their results are as infallible as the processes of nature. It is only in men's fables that the instincts of animals are portrayed like the human passions which color every line of human history. Men may be hypocrites and Pharisees—animals never.

It is hardly necessary for me to dwell upon the contrast and opposition between the facts before the Court, and the decisions in these later cases which are held to have settled the law. The decisions absolutely contradict the facts, and rest upon very doubtful grounds, to say the least. They are specimens of "legal construction," interesting chiefly as individual opinions of the judges concerning what might, could, would or should have been the "intention of the founders of the Commonwealth," but as my critic says of this question of legal construction, "not bearing upon the subsequent course of the history of slavery" in Massachusetts. If he had frankly admitted that the hidden virtue of the law of 1641 was never manifested to the world either in theory or practice, until the time arrived in which it had no possible bearing on the character and conditions of slavery in Massachusetts, I could return his slur on my discernment by a sincere tribute to his candor on one point, at least.

But these decisions are "confirmed by the opinions of jurists"! making the round and top of this legal sovereignty—which it is to be high treason to question or deny. Mr. Sumner has said that "in all her annals, no person was ever born a slave on the soil of Massachusetts." Mr. Gray has said, "all children of slaves were by law free." And the historian of New England has said "in fact no person was ever born into legal slavery in Massachusetts." "The child of slaves was as free as any other child. No person was ever legally held to servitude in Massachusetts, as being the offspring of a slave mother."

I should be very unwilling to believe that either of these distinguished jurists and scholars would repeat their statements now, or would fail to correct them upon a proper occasion or opportunity, with cheerful alacrity and due acknowledgment of the new light thrown upon the subject.

To sum up, I may apply the precise argument of my critic in his own language. We have then as a matter of law on this subject an organic act by the people, contemporaneous interpretation of it, and uninterrupted acquiescence in that

interpretation by the legislature, the courts and the people for nearly a century and a half. If the effect of any legal provision can be more conclusively ascertained, I should be glad to know the process.

But the argument from the continued practice of hereditary slavery is declared to be "not even 'worthy of a layman's law,'" and the further assertion is ventured that it "does not touch 'either the historical or legal question whether 'slavery was hereditary by law in Massachusetts.' It strikes me that if this means anything, it is a very unworthy quibble. Let us test the doctrine. If the law of 1641 did not cover hereditary slavery, it must have excluded it. If this is the true construction, how is it that not a single example can be produced, not one solitary contemporary fact or instance, to sustain the doctrine, from the entire history of Massachusetts, before the Revolution. If we are to accept this construction, where is the apology to be found for the conscious, wilful, systematic violation of so humane a provision from beginning to end of the history. But in view of the facts, this hypothesis is absurd. It admits that the children of slaves were held as slaves by birth, but denies that they could legally be so held! In a juristical view, it is a contradiction in terms. Acts which are done, and conditions which exist without a challenge for generations, are *law*, by the very definitions of law.

There is no attempt to deny that in point of fact from the beginning to the end of the institution, the children of slaves were actually held and taken to be slaves. My critic recognizes "the foothold which hereditary slavery obtained" and favors us with an "explanation easily found." It were indeed a pity if so rare a specimen of historical philosophy should be lost. Such keen insight into the remote past, and such critical sagacity in solving all the difficulties of the problem presented can belong only to a critic of "conspicuous [historical if not] judicial instincts." I quote "the facts" which constitute "the explanation," in his own language.

1. "For fifty years the number of slaves was so insignificant as not to attract attention to 'questions of this sort.'"

Then we are to understand that the fathers of New England in 1641, making a statute "explicitly 'in favor of liberty,'" recognized the institution of slavery, and had their attention sufficiently attracted to limit it by providing carefully against its hereditary quality! And straightway not only forgot all about it themselves, but forgot it so earnestly that none of their descendants ever discovered it until in the year 1796, in the excitement of the question how the wretched scattered remnants of the slave races should be provided for as paupers, a Court was found eager to pro-

nounce judgment, without hearing an argument, that a negro, who had been in fact held as a slave from the hour of his birth until he became useless through disability, and his owner rejected the burthen of his support, was born free! That this judgment had to be reversed three years later by the same judges, to meet another phase of responsibility connected with the pauperism of the Massachusetts freedmen, and it was not until there was no longer any danger of their rising from their unhonored graves to claim maintenance and support from those who had exhausted their bodies and souls, that the judges and Courts of Massachusetts could confidently declare that hereditary slavery never was legal in the Old Bay State!

2. "In a thinly settled colony, with scanty 'means of communication and almost no regular 'channels of general intelligence, the chances of 'such a point being brought to the attention of 'those most concerned must have been extremely 'small.'"

Slave-owners have never been forward to suggest doubts of their own authority, or to question their own titles to such property before "those 'who are most concerned'"—the slaves themselves; but I am unable to see how a greater density of population, or an increased service of mail and passenger coaches, with a weekly or even daily newspaper, would improve their "chances" in this respect. It certainly did not work in that way farther South than Massachusetts.

3. "The acquaintance of the public with their 'own laws and institutes bore no comparison 'with what is seen at the present day.'"

It is hard to reconcile the standard authorities on the subject hitherto received in Massachusetts, with this suggestion of the comparative ignorance of the people of that State in any period of its history. It has the merit of novelty, whether true or not. The reader will give it due weight in this discussion.

4. "In that state of society an erroneous construction of the law might easily be acquiesced 'in for generations, which in the present condition 'of things could not pass unchallenged for a single year.'"

Was this the Colony and Province of Massachusetts Bay, during the first century and a half of its existence? Can the people of Massachusetts be brought to believe and acknowledge that the state of society among the Puritans and their immediate descendants during several generations was such that although they had carefully framed and solemnly enacted a public law expressly to exclude hereditary slavery—not a single child of slaves was born in freedom under its provisions, but they continued to buy and sell, to hold and treat as slaves the children and children's children whom they had thus pretended to

emancipate, for nearly a century and a half, without challenge or compunction? Truly "a slander of the Puritan Fathers and their children more unfounded, or more discreditable to the moral sense of the utterer was never heard from the enemies of Massachusetts!" It is "an erroneous construction of" the morals and manners of that people "from generation to generation," which cannot "easily be acquiesced in," or pass unchallenged for a moment anywhere.

III. As I have nowhere suggested any "difficulty in understanding the legal effect of the Massachusetts Declaration of Rights, as applied by the Courts," or declared "the doctrine of the practical insignificance of the clause"—and as my critic is unable to cite or refer to any account of the process by which the Declaration of Rights was made to extend to enslaved Indians and negroes more complete or more thoroughly faithful to the record than my own—the main question between us in this last division of his labors concerns the history of the first clause of the first article of the Bill of Rights. He appears to maintain what I stated as the received opinion in Massachusetts, for which I am still, even with his help, unable to find the slightest trace of positive contemporary evidence. He challenges my view of "the family traditions which have designated the elder John Lowell as the author of the Declaration, and assigned the intention to abolish slavery as the express motive for its origin." Regarding it as "unfortunate that I did not undertake an historical criticism of those traditions," he proceeds to "establish" them himself in his own way. First, he brings in Dr. Belknap, then the traditions, and then the announcement that "several facts in the life of Judge Lowell make the statement intrinsically probable." Of the latter he mentions but one—the "freedom suit" in 1773, of which a particular account is given in my book.

1. "Dr. Belknap's positive statement made from his own knowledge only fifteen years afterwards." What his *whole* statement was will appear below, *unabridged*.

Probably Belknap's statement in 1795 is the earliest. In 1784, he does not appear to have been aware of the new view of the Declaration of 1780. Referring to this subject of slavery, and the return of the *stolen* negroes to Africa in 1646, he adds, "if the same resolute justice had always been observed, it would have been much for the credit and interest of the country; and our own struggles for liberty would not have carried so flagrant an appearance of inconsistency." *Hist. of N. H., Vol. 1, p. 75*. His letter to Moses Brown, July 15, 1786, concerning slavery, does not intimate any knowledge of the new views, but he did acquire the light before

June 14th, 1790, when he wrote to David Howell, who had urged upon him the establishment of an abolition society: "I am of opinion that such an association is entirely needless here, as we have no slavery to abolish; all persons who can claim the privilege of being descendants of Adam being declared free by our constitution." He adds also, "I sincerely wish that the multitudes of blacks among us might enjoy the same blessings which other people enjoy, as the fruit of their liberty; but, alas! many of them are in a far worse condition than when they were slaves, being incapable of providing for themselves the means of subsistence."

In 1792, he wrote in his history as follows: "In Massachusetts, they [negroes] are all accounted free by the first article in the declaration of rights," and he is evidently unable to see why a similar clause in the Constitution of New Hampshire should fail to produce a similar result. But that people were the descendants of men who did not pretend to have come over to worship God, but to catch fish!

In 1795, he published the following statement, partly quoted by my critic, who omitted the clause which I have italicized. The first article of the Declaration of Rights "was inserted not merely as a moral or political truth, but with a particular view to establish the liberation of the negroes on a general principle, and so it was understood by the people at large; but some doubted whether this were sufficient." This doubt is significant. It impairs, if it does not destroy, the whole theory which the passage is held to support. But this is not all. The uncertainty which prevailed is further illustrated by the reply which Belknap gives in the same document to the direct query of his correspondent—"At what period was slavery abolished?" He says "by comparing what is said in answer to queries 4th and 5th, it appears that the complete abolition of slavery may be fixed at the year 1783." *Ibid., p. 206*. His correspondent also asked in query 5th, "The mode by which slavery hath been abolished? Whether by a general and simultaneous emancipation, or at different periods? Or whether by declaring all persons born after a particular period, free?" "The general answer is, that slavery hath been abolished here by *publick opinion*, which began to be established about thirty years ago." [1765] *Ibid., p. 201*. And yet again, referring to the census, and the fact that no slaves were set down to Massachusetts, he says, "This return [in 1790] made by the marshal of the district, may be considered as the formal evidence of the abolition of slavery in Massachusetts, especially as no person has appeared to contest the legality of the return." *Ibid., p. 204*. A good thing for Massachusetts! The curious reader may find

in my book an explanation of the way in which this census was made to bear testimony to the abolition of slavery in that State. It will also enable him to appreciate the satisfaction of Dr. Belknap, that no person had appeared to "contest the legality of the return." *Notes*, p. 247. It would have been melancholy, indeed, if the Constitution of Massachusetts, an organic act by the people, "backed by a contemporaneous judicial interpretation of it, and uninterrupted acquiescence in that interpretation by the Legislature, the courts and the people," for even ten years, had been made void and of none effect by a single slaveholder's challenge of the marshal's false though flattering return!

Secondly, come "the traditions," or more properly the tradition of the Lowell family. It is already obvious that this tradition is to be tried on its own merits, for Dr. Belknap says nothing whatever about Judge Lowell's agency in the matter. This omission in his history of the subject is more significant in view of the circumstance that they were contemporaries in Boston and probably familiar acquaintances at the time when Dr. Belknap wrote his account of slavery in Massachusetts, for which he collected the materials by circulating printed queries among such gentlemen as were supposed to be well informed or likely to be interested. There is another historian of Massachusetts, who may properly be referred to here. Alden Bradford, born in 1765, graduated at Harvard in 1786, was one of the earliest if not an original member of the Massachusetts Historical Society, whose historical researches and publications justly make his statements and corrections highly important. In his *History of Massachusetts*, (Vol. II., p. 227,) published in 1825, he says of the first article in the Declaration of Rights: "This was inserted, no doubt, as a general axiom. But it was also said, at the time, that there was a reference to the condition of the Africans, which had been held in slavery in Massachusetts," &c. In his revised edition, published in 1835, he gives the following account: "In 1783, the involuntary slavery of the people of color in Massachusetts was in effect condemned and prohibited, by a decision of the highest judicial tribunal in the State. * * * The case appears to have been decided on great constitutional principles recognized in the declaration of the bill of rights 'that all men are born free and equal.'" p. 305.

Judge Lowell died in 1802. The late Rev. Dr. Charles Lowell was the third son, born in 1782. His elder brothers, John, born in 1769, died in 1840; Francis Cabot, born in 1775, died in 1817.

The earliest public notice of Judge Lowell's alleged authorship of the freedom clause in the

Bill of Rights may be found in a communication to the Editor of the *Boston Courier*, from Dr. Charles Lowell, dated May 17, 1847. It appears to have been elicited by some previous discussion of the question of intention in the framers of the Constitution of 1780, in the introduction of the clause referred to. Dr. Lowell says: "I have the authority of my late brother, John Lowell, for saying that he knew that his father, the late Judge Lowell, who was on the committee, introduced this clause for the express purpose of settling the question about slavery in the State, and that, as soon as the Constitution was adopted, he declared that every black in the State was free, and offered his services gratuitously, to any such person whose right to his freedom was contested. My brother further told me that he believed my father wrote that article himself. * * * I well remember myself, when I was a boy at Andover Academy, being often told by an intelligent old black man who sold buns, that my father was the friend of the blacks, and the cause of their being freed, or something to that effect, and that I often had a bun or two extra on this account."

In 1852, Dr. Lowell communicated the notice to the Massachusetts Historical Society, which is printed in the *Collections*, IV. i. 90. The statement of Dr. Belknap in 1795 is quoted *in part* and is followed by these words: "I feel an honest pride in saying, as I have authority to say, that this clause was introduced by my father, the late Judge Lowell, for the purpose above stated, and that, on its adoption by the convention, he offered his services as a lawyer, gratuitously, to any slave in the Commonwealth who might wish to substantiate his claim to freedom."

In the following year, 1853, Dr. Lowell addressed Mr. Bancroft, the historian, on the subject, referring to his "brief statement" published by the Massachusetts Historical Society as being "founded on the authority of my [his] father himself." He adds: "At any rate, he inserted y^e preamble from y^e Declaration of Independence for y^e express purpose of abolishing slavery. As a lawyer, and an eminent one, he knew y^e effect & gained the first cause tried in Essex Co., on y^e subject, on the ground which he himself had placed y^e subject by his clause in the Bill of Rights."*

In 1856, Dr. Lowell addressed a note to the author of "Anthony Burns a History," in which he said, "My father introduced into the Bill of Rights the clause, by which slavery was abolished in Massachusetts. You will find, by referring to the Proceedings of the Convention for framing the Constitution of our State, and

* The "freedom suit" in Essex here referred to was tried in 1773, seven years before the adoption of the Bill of Rights.

“to Eliot’s N. E. Biographical Dictionary, that he was a member of the Convention, and of the Committee for drafting the plan, &c., and that he suggested and urged on the Committee the introduction of the clause taken from the Declaration of Independence a little varied,* which virtually put an end to slavery here, as our courts decided, as the one from which it was taken ought to have put an end to slavery in the United States. This he repeatedly and fully stated to his family and friends. * * *

“In regard to the clause in the Bill of Rights, my father advocated its adoption in the Convention, and, when it was adopted, exclaimed: ‘Now, there is no longer slavery in Massachusetts; it is abolished, and I will render my services as a lawyer gratis, to any slave suing for his freedom, if it is withheld from him,’ or words to that effect.”

A later statement of this tradition is to be found in the biography of the elder John Lowell, understood to be furnished by the family for the New American Cyclopædia in 1860. It is as follows: “He inserted in the bill of rights the clause declaring that ‘all men are born free and equal’ for the purpose, as he avowed at the time, of abolishing slavery in Massachusetts; and after the adoption of the Constitution he offered through the newspapers his services as a lawyer to any person held as a slave, who desired to establish a right to freedom under that clause. The position maintained by him on this question was decided to be constitutional by the Supreme Court of the State in 1783, since which time slavery has had no legal existence in Massachusetts.”

A comparison of the preceding series of statements, which illustrate fully the birth, growth and progress of “the tradition,” with the facts and authorities set forth in my “notes,” etc., will enable all who are interested to decide for themselves whether it will “stand the test of historical criticism.” One feature appears throughout the series, which is of itself a refutation of the intentional theory. It is the recognized necessity for a suit in the Courts to establish the rights of slaves to freedom. This would probably appear with greater distinctness and force if the newspapers in which Judge Lowell offered his legal services should be brought to light. The elder John Lowell was undoubtedly among the friends of the black man in Massachusetts at a time when it was less fashionable to be so than

* This does not appear either in the proceedings of the Convention, or in Dr. Eliot’s Biographical Dictionary. Yet Dr. Eliot was a contemporary and deeply interested in biographical and historical researches. He co-operated with his friend Dr. Belknap in establishing the Massachusetts Historical Society. He published his Biographical Dictionary in 1809. In his life, he notices very particularly the services of Judge Lowell in the constitutional convention, which renders his silence on the main point more remarkable.—*Biog. Dict.*, 301.

it is now. The most conclusive evidence of the fact may be derived from my book, though not to be found in any of the biographical sketches previously published. It is probable that the dramatic story of his action concerning the origin and adoption, etc., of the Bill of Rights, grew out of this general fact, and particularly the illustration of it in 1773, in the Essex “freedom suit.”

I do not think it is necessary for me to point out the particulars of inconsistency and conflict with established facts, in all this testimony of the late Dr. Lowell, which rests entirely on his remote recollections of what he had been told by his brother. The statement of my critic, that Dr. Lowell “derived it himself from his father,” is not sustained by any evidence whatever which I have been able to discover—certainly, not by the authority referred to. It is not necessary to infer the presence of any intention to violate the truth of history in any of the statements of Dr. Lowell. It is neither difficult nor improper to account for his mistakes, when we remember how imperfect are the recollections of age, and how apt such errors are to become identified with truth among the cherished remembrances of filial piety. Suggestions not intrinsically improbable, uncorrected by judicious historical criticism, readily come to be regarded and firmly held as “credible statements of history,” especially when, as in this instance, they suit the prejudices of the time, and fall in with the current of popular opinion. But, when once questioned and exposed, the writer who repeats them cannot plead, for his excuse, the same want of intention to deceive.

I have thus re-examined the leading points of animadversion presented by my critic in lieu of that general review of my book which he thinks that it invites from the hand of the careful and candid investigator. The reader who has had the patience to accompany me through the details which I have given, will doubtless indulge me a little further. He must judge whether I have effectually disposed of the specific charges of suppression, dishonesty and misrepresentation, or not. He will also be able to estimate the value of those general accusations with which the former are repeated at the close of the review, as well as the opinion that “in no part of the work is it safe to follow the author upon trust.” This opinion would be stronger in everything but expression if my critic had pointed out a single statement of fact which is not sustained by a formal reference to the authorities on which it is based, or any passages in my work which justify his wholesale denunciation.

But, after all, he tells us that there is nothing new in my book, nothing which was not already well known in Massachusetts! “NOBODY HAS

"DENIED THAT SLAVERY WAS A MARKED FEATURE IN THE PROVINCIAL HISTORY OF MASSACHUSETTS, AND TOO MUCH HAS BEEN SEEN OF THE SPIRIT OF SLAVERY IN OUR OWN DAYS FOR ANY ONE TO SUPPOSE THAT IT COULD EXIST ANYWHERE WITHOUT SUBSIDIARY EVILS OF THE MOST REPULSIVE NATURE." No Massachusetts writer ever made such a confession before. Her historians have never recognized or acknowledged this "marked feature," or indulged its exhibition anywhere; and if I have added nothing to their knowledge of the subject, those who may study it hereafter will not fail to admire the art with which the champions of Massachusetts have hitherto contrived to conceal the truths with which they have always been so familiar.

As for the imputation of local or political prejudice against Massachusetts, I have neither; nor do I know what there is in my work to justify the suggestion that I have written "to please the personal resentments of literary friends." Neither do I believe it possible "so to write the

"history of the best of mankind that they shall seem to have been the worst." The true history of every community must present its lessons of humiliation as well as pride—that of Massachusetts must acknowledge among her generations, some of the best and some of the worst—

"Non omnes cœlicolas, nec supera alta tenentes."

I cannot accept the views of my critic as to the motto of my book. Fidelity to the truth of history, and manly confidence in its results, are far more honorable than any cowardly sensitiveness to that sort of criticism whose chief weapon is the "*suspicio gratiæ, aut simultatis*"—the insinuation of favor or the imputation of bad motives. Cicero did not counsel cowardice in the face of such hostility. And he who conscientiously obeys the laws of Truth may bid defiance to an enemy who can only insinuate a groundless suspicion of his motives.

GEORGE H. MOORE.

New York, November 10, 1866.

[ADVERTISEMENT.]

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